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Report of the Secretary-General on coverage of staff by the malicious acts insurance policy and on security spending by organizations of the United Nations system

Summary

The present report is submitted pursuant to the request of the General Assembly, in paragraphs 43 and 55 of section XI, entitled "Strengthened and unified security management system for the United Nations", of resolution 59/276, on the coverage of staff of the United Nations system by the malicious acts insurance policy and on a clearer presentation of the security spending by each of the organizations of the United Nations system.

The coverage of staff of the United Nations system under the malicious acts insurance policies maintained by the organizations of the system is closely comparable system-wide and most organizations of the system maintain supplemental policies to provide coverage in countries that are excluded under existing insurance policies.

As regards security-related spending, the pattern of expenditure by the organizations of the United Nations system reveals a substantially increasing trend over the period 2003-2005, according to a system-wide survey launched by the United Nations System Chief Executives Board for Coordination (CEB) in March 2005. However, since a significant part of the overall spending reported by the organizations of the system is derived from estimates, rather than from specific data, owing to the absence of a standard budgeting and accounting system across the United Nations system, the presentation of security-related spending contained in this report should be considered as a work-in-progress. For clearer presentation of security-related spending by the organizations of the system as a whole, CEB intends to deploy, as early as possible, a standard budgeting and accounting system for security-related expenditure.

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I. Introduction

1. In paragraph 43 of section XI, entitled "Strengthened and unified security management system of the United Nations", of resolution 59/276, the General Assembly requested the Secretary-General in his capacity as Chairman of the United Nations Chief Executives Board for Coordination (CEB) to address the matter of the malicious acts insurance policy in the context of the Board and to report to the General Assembly thereon at its sixtieth session with a view to ensuring that all staff were covered. In paragraph 55, the General Assembly recognized the need for a clearer presentation of security spending by each organization of the United Nations system and requested the Secretary-General, as Chairman of CEB, to inform the General Assembly at its sixtieth session on that issue.

II. Malicious acts insurance policy

2. In the context of the malicious acts insurance policy, consultations were carried out with organizations of the United Nations system with a view to obtaining a more complete understanding of the overall coverage of United Nations staff under the policy or a comparable scheme.

3. These consultations have indicated that the terms and conditions of malicious act insurance policies maintained by the organizations of the United Nations system are very much comparable with respect to the key variables of any such policies, i.e.: (a) who is covered, (b) what is covered, (c) where such coverage applies, (d) when it applies, (e) how the policy is structured and (f) the value of the coverage.

4. Coverage obtained through participation in the United Nations-maintained malicious acts insurance policy[1] currently excludes 10 headquarters countries, namely, Austria, Canada, France, Germany, Italy, Japan, the Netherlands, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. A number of organizations, including non-participants in this scheme, maintain a supplementary policy for the 10 countries not covered by the malicious acts insurance policy. The United Nations is looking into the possible expansion of the policy to countries currently excluded. Quotations are being sought from insurers based on reported staff numbers in the countries concerned. As the expansion of coverage will have financial implications for participating organizations, the policy decision and related financial aspects of expanding malicious acts insurance coverage will be discussed at the forthcoming meetings of the High Level Committee on Management.

[1] At present 21 organizations participate in the United Nations-maintained policy: the United Nations, UNHCR, UNAIDS, UNDP, UNFPA, UNOPS, UNICEF, UNRWA, FAO, WHO, PAHO, IMO, IOM, UNIDO, UNESCO, IAEA, ITC, ICAO, The International Tribunal for the Former Yugoslavia, The International Criminal Tribunal for Rwanda and CTBTO. Other organizations, such as WFP, ITU and ILO, maintain their own policies for such coverage.

III. Security spending by each organization of the United Nations system

5. In order to respond to the request of the General Assembly contained in paragraph 55 of resolution 59/276, a survey was launched in March 2005 in which all the organizations of the United Nations system were requested to provide comprehensive data on their security-related spending.

A. Methodology

6. Following discussions within the framework of CEB, and given that the organizations of the system currently utilize different budgeting and accounting systems for tracking security-related expenditure, it became necessary to first establish a common accounting framework especially suited to the reporting of security-related expenditure pursuant to resolution 59/276.

7. In order to move ahead quickly and meet the reporting deadline for the sixtieth session of the General Assembly, it was agreed that the security-related expenditure categories being used by the Office of the United Nations High Commissioner for Refugees (UNHCR) would be adopted as a starting framework for a system-wide survey. This was on the premise that, as a field-based organization with significant costs both in the field and at headquarters, UNHCR exhibited a fairly wide range of security-related expenditure that could serve as a working model for system-wide analysis of security-related expenditure.

8. UNHCR uses 16 categories or objects of expenditures relating to staff safety and security. They were used for reporting its security-related expenditure for 2003 and 2004, and for establishing budgetary estimates for 2005. These expenditure categories are presented in annex I along with a generic definition of the specific security-related costs covered by each category. As shown in annex I, the expenditure categories are grouped under type A — agency contribution for common system staff safety and security costs, and type B — internal agency staff safety and security costs. Subsequently, based on the survey results, a third group of expenditure was created, namely type C — miscellaneous security costs not covered under types A or B.

9. The survey required each organization of the system to provide financial data on the basis of the above-mentioned UNHCR expenditure categories. It was expected that the collection of data to fit the UNHCR framework might present some challenges, mainly because of certain incompatibilities between the UNHCR expenditure categories and the existing disaggregation and/or definition of data, and/or budgeting and financial reporting structures of other organizations of the system. In some cases, this necessitated extrapolation from reported financial figures or estimation of the relative weight and relevance of certain security-related items, or other forms of adjustment.

10. For the purposes of improving the reporting framework in the future and providing a baseline for further analysis, organizations were also requested to take the opportunity of the survey to highlight any methodological concerns regarding the collection and presentation of data specific to security-related expenditure.

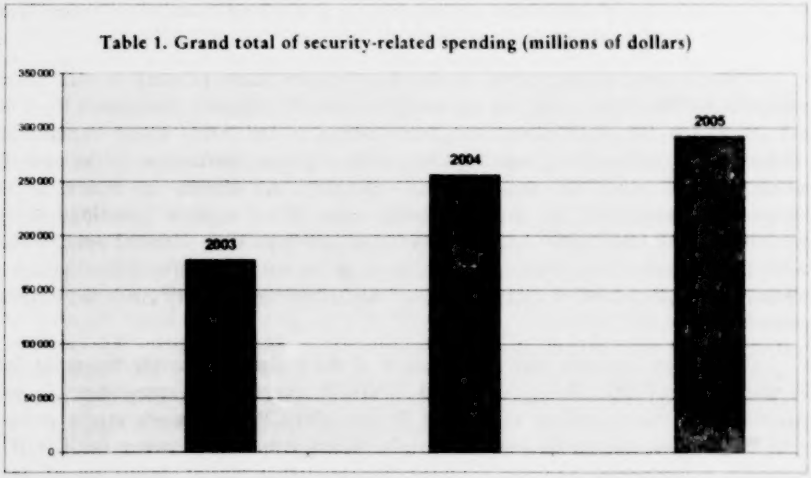
Annex II presents a list of the methodological issues encountered by organizations of the system.

B. Survey results

11. The information provided by the organizations of the system[2] through the survey is presented in annex III. The annex shows a breakdown of expenditure according to the three types of security expenditure identified in paragraph 8 above, i.e., type A — contributions to common system security costs; type B — internal agency spending on security; and type C — miscellaneous costs not covered under types A or B. It should be noted that the reported figures in annex III do not include the expenditure figures of the World Bank, IMF, UPU, ITU, the World Tourism Organization or the World Trade Organization as these could not be made available during the survey. Steps are currently being taken by the CEB secretariat to obtain the relevant information from these organizations for a future update.

12. Annex III shows that from a system-wide perspective, total security-related expenditure reached $169.9 million in 2003, $252.4 million in 2004 and for 2005 it is expected to reach $286.6 million. Thus far, as shown in table 1 below, the greatest increase appears to have occurred in 2004, which showed a 49 per cent growth over 2003. The expected growth in expenditure level from 2004 to 2005 is around 14 per cent.

Table 1. Grand total of security-related spending (millions of dollars)



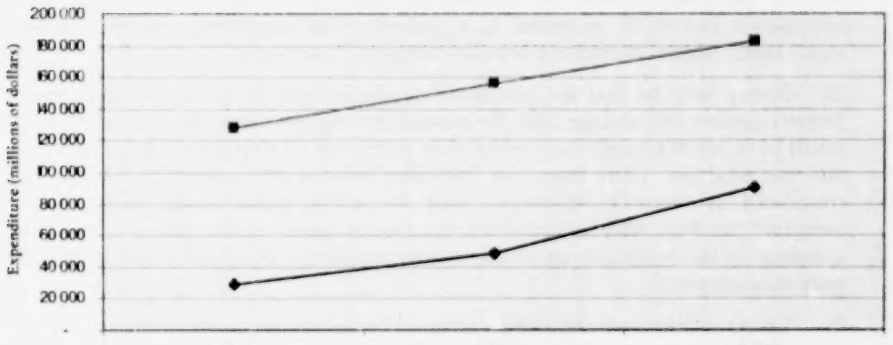
13. Annex III shows that the largest expenditure figures were reported by the United Nations ($66.4 million in 2003, $101.8 million in 2004 and $93 million expected for 2005), followed by UNHCR and UNICEF in 2003 and 2004, and UNICEF and UNDP in terms of expected spending levels in 2005.

14. Growth in expenditure for common system costs (type A) was more evident than for internal agency costs (type B) during the reporting period, as shown

[2] The United Nations, ILO, FAO, UNESCO, ICAO, WHO, WMO, IMO, WIPO, IFAD, UNIDO, IAEA, UNDP, UNHCR, UNRWA, UNICEF, UNFPA, WFP, ITC and UNAIDS.

graphically in table 2 below. While exact figures and accurate recordings could not be made available, it appears from an analysis of the spending pattern that this growth is most likely attributable to the tendency for newly-identified security requirements to be reported as part of the contributions to common system costs, while increases in internal costs were considered less urgent or are planned to be incurred in the coming years.

Table 2. Common-system vs. agency-specific costs



15. From 2003 to 2004, spending for type A (common system costs) showed the largest growth (66 per cent) compared to spending for types B (internal costs) and C (other costs). Within common system costs, the organizations' share in the annual operations of the former United Nations Security Coordinator (UNSECOORD) in New York and in the field (category 1) increased significantly between 2004 and 2005, by about 24 per cent, doubling from a 12 per cent increase between 2003 and 2004. This is so far the largest cost increase in the entire survey.

16. Expenditure for the Headquarters Field Safety Section — FSS (category 7) was also significant, reported at $53.1 million in 2003, $52.9 million in 2004 and estimated to reach $66.9 million in 2005.

17. With the exception of the expenditure for enhanced minimum operating security standards requirements at headquarters (category 16), the relative weight of most items over total expenditure remained nearly constant. The enhanced minimum operating security standards requirements expenditure increased significantly, from 1 to 5 per cent.

18. Among specific categories under type B (internal costs), two exhibited remarkable increases in both their absolute and relative values in 2004: category 10 (costs relating to security evacuation and hazard allowance) and category 14 (costs related to security and safety equipment).

IV. Conclusion and recommendation

19. The results of the survey clearly show that security spending increased significantly during the reporting period. It should be borne in mind, however, that a considerable part of the overall spending reported in annex III is derived from estimates (based on extrapolations and/or approximations of security-related expenditure data not readily available), given the constraints imposed by the non-uniform reporting and accounting structure that currently exists among the organizations of the system. Consequently, while it was possible for some of the reported cost components to be identified during the budgeting stage, most could only be extrapolated after the expenditure was incurred. Moreover, other cost components had to be estimated as a percentage of expenditure incurred under object codes which referred to a broader category of cost items.

20. It may well be that the pattern of security-related spending of the United Nations system will change after the expenditure figures from those organizations which have yet to provide data (as noted in paragraph 11 above) have been factored into the analysis. Until then, the foregoing pattern of expenditure should be considered as tentative. Moreover, until the action recommended in the next paragraph has been fully implemented, the present report on the pattern of security spending by the organizations of the system should be considered essentially as a work-in-progress.

21. Taking into account the views expressed by the organizations of the system on the difficulties encountered in the course of the survey, as shown in annex II, and to better serve the interests of Member States in accordance with resolution 59/276, the United Nations system, in the framework of CEB, proposes to initiate steps to establish, on a system-wide basis, a standardized accounting and budgeting framework for security-related expenditure so as to improve the accuracy and the clarity of the analysis of security-related expenditure patterns and trends, and consequently enhance policy review and formulation in this area.

Annex I

UNHCR model — categories of expenditure relating to staff safety and security

Category	*Calculation methodology/assumptions*
A. UNHCR contribution for common system staff safety and security costs	
1. Agency share of annual UNSECOORD operations in the field	The biannual UNSECOORD budget is established by the General Assembly; agencies are billed on an apportionment basis using annual staff census information. Billing is normally done in two phases — initial and final adjustment. Financial information is available only in General Assembly documents on the budget. UNHCR includes this cost under Emergency and Security Service (ESS) budget (global component of Regional Security Administrative Budget and Obligation Document (ABOD).
2. Agency share of the annual malicious act insurance policy operated by UNSECOORD	As of 1 January 2004, coverage is expanded to the whole world (with the exception of Austria, Canada, France, Germany, Italy, Japan, the Netherlands, Switzerland, the United Kingdom and the United States). Covered countries are divided into two categories, with high risks and low risks, and a corresponding premium applies. Until 2004, billing was based on staff census data, but underwriters raised serious questions concerning the validity of the information and in 2004 the CEB secretariat consolidated data obtained from agencies directly.
3. Agency share of the United Nations system-wide cost — shared security-related activities in the field	This is 15 per cent of object of expenditure 921 (Contribution to joint administrative activities within the United Nations family). In addition to cost-sharing of UNSECOORD (which is essentially UNSECOORD field staff costs, equipment/missions/transport of these staff), agencies contribute to country-level minimum operating security standards (MOSS) related activities, such as the establishment of common country radio networks, warden systems, etc. Within a UNHCR field office, related amounts are budgeted under object of expenditure 921, but this also includes other general common system administrative costs, particularly in situations where there are shared United Nations premises.
4. Agency share of the United Nations system-wide cost-shared joint medical services in the field	This is 100 per cent of object of expenditure 933 (Joint medical services), as currently a medical service is also considered part of MOSS.

Category	*Calculation methodology/assumptions*
B. UNHCR internal staff safety and security costs	
5. Costs related to agency field security personnel in various offices in the field	Salary and common staff costs of established international/national Professional and General Service posts in the field.
6. Upgrade of operations to meet minimum operating security standards, as well as any new/unforeseen security-related needs	Regional security contingency reserve[a] expenditures, managed by ESS, covering new/unforeseen costs at the field level. Offices in the field should and do budget regular/foreseeable security costs within their ABODs, but there are no provisions/mechanism to respond rapidly to a changed environment, thus this allocation was established in 2002 to address this issue.
7. Headquarters Security Unit/staff costs	Salary and common staff costs of security staff, as well as support costs for the Security Unit.
8. Costs of training on security matters	
9. Costs of supplementary staff insurance worldwide	Costs of supplementary staff insurance for staff not covered under the malicious acts insurance policy administered by UNSECOORD.
10. Costs related to security evacuation and hazard allowances	Costs related to security evacuation and hazard allowances — 100 per cent of object of expenditure 177 (Security evacuation travel/hazard allowances). This is part of salary/common staff costs provisions; however, it is not shown at the budgeting phase. Annual expenditure against object 177 is utilized to project these costs for the following years.
11. Costs related to offices' and residential security in the field, including security contracts	Costs related to offices' and residential security in the field, including security contracts — 60 per cent of object of expenditure 415 (Miscellaneous maintenance services, including security contracts). Budgetary provisions within field support budgets under this object of expenditure also include other maintenance, therefore only 60 per cent were counted as security-related. There is no meaningful way of assessing whether this is appropriate.

Category	*Calculation methodology/assumptions*
12. Costs of transportation equipment related to security	Costs of transportation equipment related to security — 15 per cent of object of expenditure 641 (Vehicles). Budgetary provisions within field support budgets under this object of expenditure include armoured vehicles or transport purchased owing to security reasons, therefore only 15 per cent were counted as security-related. There is no meaningful way of assessing whether this is appropriate.
13. Costs of telecommunications equipment related to security	Costs of telecommunications equipment related to security — 30 per cent of object of expenditure 651 (Radio network equipment). Budgetary provisions within Field Support budgets under this object of expenditure include telecom equipment purchased specifically due to security considerations, but it has a dual use, therefore only 30 per cent was counted as security-related. There is no meaningful way of assessing whether this is appropriate.
14. Costs related to security and safety equipment	Costs related to security and safety equipment — 100 per cent of object of expenditure 694 (Security and safety equipment)
15. Costs related to field security guards	
16. Enhanced MOSS requirements at Headquarters	

[a] UNHCR budgets $3 million per year as a contingency reserve to address unforeseen security costs, the majority of which involve MOSS compliance.

Annex II

Methodological issues concerning the collection and presentation of security-related expenditure data

1. For most organizations of the United Nations system, providing financial data in accordance with the model framework based on the UNHCR security-related expenditure accounts necessitated extensive extrapolation from reported financial figures and estimation of the weight and relevance of certain security-related expenditure components not individually identifiable.

2. For some organizations, the amounts reported under type C spending (miscellaneous security costs not covered under other categories) weighed heavily on the overall costs, showing that the model framework differed significantly from their budgeting and financial reporting structure and was therefore unsatisfactory in providing a comprehensive picture of security spending.

3. Organizations' contributions to the malicious acts insurance policy and the former UNSECOORD[a] (categories 1 and 2 of the model framework) were easily identifiable. In most cases these contributions are budgeted under separate budget codes within the joint activities allocation.

4. For field expenditure in most organizations, budgetary and expenditure structures did not allow differentiation between country-level security costs that are internal to the agency and those originating from joint activities with other organizations of the United Nations system. In fact, organizations' share in country-level joint activities (category 3) was either diluted in the overall joint-activities code or was otherwise recorded under "security-related costs". Amounts indicated under category 3 were therefore estimated as a percentage of such general allocations.

5. Some organizations indicated the need to address this issue in the future. Specifically, some organizations are introducing budget codes corresponding to their main categories of field security-related costs. Other organizations, owing to their decentralized structure, had to obtain and compile their country-level expenditure data from their respective regional offices.

6. One organization indicated that, in order to establish a method to determine such costs, it would solicit a sampling of data from field offices of different sizes. Total expenditure to meet minimum operating security standards by offices at the country level and their mode of recording such payments would be requested. The results of this analysis would enable the organization to formulate the costs for this item.

7. An analysis of the feedback on organizations' type B spending (internal staff safety and security costs, covering categories 5 to 16) indicated that the majority of the reported amounts were not budgeted separately, but could only be derived once expenditures were incurred.

8. For many organizations, this exercise proved more difficult for costs that are normally imbedded within a specific category, such as "transportation" or

[a] On 1 January 2005, UNSECOORD was incorporated in the Department of Safety and Security, established pursuant to General Assembly resolution 59/276 (XI) of 23 December 2004.

"telecommunications". Some organizations, however, did indicate that, when equipment was required for security reasons, it would be recorded fully under "security equipment".

9. Information provided on category 6 (Upgrade of operations to meet minimum operating security standards, as well as any new/unforeseen security-related needs) shows that the UNHCR practice of setting aside a contingency reserve is not widespread; some other organizations have established special allocations to meet exceptional requirements.

10. The training-related item (category 8) proved meaningless within the current budgetary and expenditure reporting structure of organizations: either it was not possible to separate expenditure for training provided in the field from the training expenditure at headquarters, or security-related training costs were not reported separately from other training costs.

Annex III

Organizations' security-related expenditure 2003-2005

Activity	*A. 2003*	*B. 2004*	*B/A*	*C. 2005*	*C/B*
A. Agency contribution for common system staff safety and security costs					
1. Agency share of annual UNSECOORD operations in New York and in the field	**20 134 781**	**30 707 137**	53%	**69 644 333**	127%
% of total expenditure	11%	12%		24%	
2. Agency share of the annual malicious act insurance policy operated by UNSECOORD	**2 922 943**	**9 290 534**	218%	**5 719 499**	-38%
% of total expenditure	2%	4%		2%	
3. Agency share of United Nations system-wide cost-shared security-related activities in the field	**4 531 057**	**6 654 953**	47%	**13 105 458**	97%
% of total expenditure	3%	3%		4%	
4. Agency share of United Nations system-wide cost-shared joint medical services in the field	**1 452 723**	**1 516 994**	4%	**1 591 739**	5%
% of total expenditure	1%	1%		1%	
Subtotal A	**29 041 504**	**48 169 618**		**90 061 029**	
B. Agency internal staff safety and security costs					
5. Costs related to agency field safety staff in various offices in the field	**12 198 443**	**19 857 937**	63%	**23 730 218**	19%
% of total expenditure	7%	8%		8%	
6. Upgrade of operations to meet minimum operating security standards, as well as any new/unforeseen security-related needs	**13 590 480**	**16 401 935**	21%	**22 926 016**	40%
% of total expenditure	8%	6%		8%	
7. Headquarters Field Safety Section costs	**54 090 890**	**53 598 953**	-1%	**67 415 906**	26%
% of total expenditure	30%	21%		23%	
8. Costs of training on security matters	**1 489 000**	**2 224 510**	49%	**2 180 500**	-2%
% of total expenditure	1%	1%		1%	
9. Costs of supplementary staff insurance worldwide	**835 903**	**1 462 200**	75%	**1 474 200**	1%
% of total expenditure	0%	1%		1%	
10. Costs related to security evacuation and hazard allowances	**9 529 541**	**12 339 889**	29%	**12 399 488**	0%
% of total expenditure	5%	5%		4%	
11. Costs related to offices' and residential security in the field, including security contracts	**14 837 410**	**14 570 095**	-2%	**16 700 626**	15%
% of total expenditure	8%	6%		6%	

Activity	*A. 2003*	*B. 2004*	*B/A*	*C. 2005*	*C/B*
12. Costs of transportation equipment related to security	**3 810 455**	**1 916 000**	-50%	**2 191 737**	14%
% of total expenditure	2%	1%		1%	
13. Costs of telecommunications equipment related to security	**9 619 567**	**8 960 151**	-7%	**7 498 889**	-16%
% of total expenditure	5%	3%		3%	
14. Costs related to security and safety equipment	**4 570 760**	**9 863 569**	116%	**10 856 208**	10%
% of total expenditure	3%	4%		4%	
15. Costs related to Field Security Guards	**1 971 293**	**1 038 680**	-47%	**2 146 404**	107%
% of total expenditure	1%	0%		1%	
16. Enhanced MOSS requirements at headquarters	**1 459 067**	**13 313 574**	812%	**13 436 792**	1%
% of total expenditure	1%	5%		5%	
Subtotal B	**128 002 809**	**155 547 493**	**22%**	**182 956 984**	**18%**
C. Other miscellaneous security costs not covered above					
Subtotal C	**20 461 993**	**52 323 035**	**156%**	**18 498 039**	**-65%**
Grand total by organization					
UN	66 353 228	101 769 352	53%	93 008 691	-9%
ILO	3 349 500	2 323 000	-31%	3 000 400	29%
FAO	5 834 000	6 377 000	9%	8 343 000	31%
UNESCO	1 808 041	2 911 445	61%	3 945 075	36%
ICAO	91 500	91 500	0%	142 000	55%
WHO	11 090 725	9 161 989	-17%	14 255 204	56%
WMO	273 000	363 300	33%	363 300	0%
IMO	33 455	40 441	21%	27 786	-31%
WIPO	1 098 900	1 098 900	0%	1 098 900	0%
IFAD	571 500	1 802 500	215%	2 358 500	31%
UNIDO	1 550 500	1 459 200	-6%	5 464 800	275%
IAEA	3 307 254	9 821 173	197%	12 425 705	27%
UNDP	9 884 550	17 650 000	79%	31 997 700	81%
UNHCR	24 015 500	28 614 135	19%	30 967 164	8%
UNRWA	3 531 707	5 867 570	66%	4 968 888	-15%
UNICEF	23 066 455	28 102 990	22%	35 167 100	25%
UNFPA	1 900 116	1 859 349	-2%	3 010 950	62%
WFP	19 109 442	35 997 950	88%	38 431 600	7%
ITC	218 018	344 432	58%	1 689 763	391%
UNAIDS	418 915	383 920	-8%	849 527	121%
Grand total	**177 506 306**	**256 040 147**	**44%**	**291 516 053**	**14%**

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Item 58 (c) of the provisional agenda*
Eradication of poverty and other development issues: human resources development

Human resources development

Report of the Secretary-General

Summary

The present report, prepared in response to General Assembly resolution 58/207 of 23 December 2003, provides an overview of the need for promoting comprehensive and cross-sectoral approaches to human resources development. It also emphasizes the mutually reinforcing relationship between human resources development and the realization of the internationally agreed development goals, including those contained in the Millennium Declaration, and how both should be pursued in the context of national development strategies. As stipulated by the General Assembly, the report specifically focuses on the need for investment in human resources development, gender mainstreaming and equality, the role of information and communication technologies, the role of the public sector and its broad-based engagement in the formulation and implementation of national and local policies to promote human resources development and the role of United Nations system support. It also addresses the impact of the movement of highly-skilled and educated people on human resources development in developing countries and makes a number of related recommendations.

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Contents

		Paragraphs	Page
I.	Introduction	1–6	3
II.	Challenges of human resources development and emerging approaches	7–42	4
	A. Investments in human resources development	7–15	4
	B. Gender mainstreaming and gender equality in human resources development	16–23	6
	C. The role of knowledge, science and technology, including information and communication technologies, in human resources development	24–33	8
	D. The role of the public sector in human resources development	34–39	10
	E. United Nations system efforts to support human resources development in developing countries	40–42	11
III.	The impact of the migration of skilled labour and people with advanced education	43–68	12
	A. Level and characteristics of migration of skilled labour	43–54	12
	B. Management of highly skilled labour migration and policy options for developing countries	55–62	15
	C. Measures to shift from "brain drain" to "brain circulation"	63–68	17

I. Introduction

1. Human resources development is essential in enabling people to enlarge their choices[1] and expand their freedoms.[2] At the core of human resources development is the concept of human development, which relates to people's physical well-being, such as health, nutrition, education, and to the widening of choice and enhanced empowerment, including participation, political freedoms and cultural aspects. What people can positively achieve is influenced by and interconnected with economic opportunities, political liberties, social powers, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives. Human resources development is fundamental to the achievement of these freedoms.

2. In the Millennium Declaration, the right of individuals to lead a productive life is stressed. The Millennium Project, which focuses on how to achieve the Millennium Development Goals, has presented the Goals as the means to build the human capital needed to enable individuals to lead a productive life. A healthier, better nourished worker is a more productive worker, and improved water and sanitation infrastructures reduce illness and raise output per capita.

3. The challenge of human resources development has thus evolved into a much broader socio-economic and public policy concept, embracing more comprehensive, cross-cutting and cross-sectoral approaches that combine investment in economic growth with investment in the provision of basic social services as well as in other relevant sectors in order to enhance the pool of individuals who act as productive agents (human capital) for development.

4. Increases in human resources facilitate both broader participation in economic and social life and augment economic productivity and income. Sustained human resources development requires sustained investment, not only for economic growth, but also for poverty eradication, provision of basic social services, sustained livelihood, empowerment of women, involvement of youth and vulnerable indigenous groups and all other sectors essential to building human skills and capabilities. This warrants cross-cutting and cross-sectoral approaches, captured in the internationally agreed development goals, to address basic human development needs and all other requirements necessary to build human capital for sustained economic growth and development.

5. Globalization and the evolution of information and communication technologies have increased the international dimension of this issue. International mobility, in particular the migration of skilled labour, has a direct impact on the effectiveness of national policies and achievements in human resources development. The lack of human resources development in developing countries has repercussions on a number of other areas beyond national borders, including human security, international stability and peace. The management of this issue thus requires both national and global responses.

6. The present report builds on earlier reports on this subject and has been prepared in response to General Assembly resolution 58/207. As stipulated in the resolution, the report examines the strategic framework for investment in human resources development and considers the role of gender mainstreaming and equality, science, technology, information and communication technologies and the public sector in promoting human resources development (see sect. II below). It also discusses United Nations system efforts to support developing countries in these

areas. In addition, the report focuses on the impact of the movement of skilled labour and analyses the level and characteristics of the migration of skilled labour, the issue of its management and proposed measures for a shift from "brain drain" to "brain circulation" (see sect. III below).

II. Challenges of human resources development and emerging approaches

A. Investments in human resources development

7. National development strategies that have successfully triggered a virtuous cycle of economic performance focused both on macroeconomic growth and human development. While there is no unique path to trigger a virtuous cycle, it is more likely to occur when economic growth is based on an adequate rate of investment and equitable income distribution through employment generation and poverty eradication policies and when there are high ratios of government expenditure in human development. It is widely recognized that investment, whether domestically or externally financed, in areas such as health, nutrition, education, training, skills development, capacity-building and research and development, contributes significantly to building the human resources necessary to ensure a virtuous cycle of sustained economic growth. For example, data on education reveals that while investment flows affect economic profitability in the short run, human resources development affects profitability and economic growth in the long run. The education of the female population has shown to be critical in ensuring economic growth and human resources development.

8. A useful strategic framework for investing in human resources development is offered by Gustav Ranis and Frances Stewart,[3] who suggest, and demonstrate empirically, that a successful method of generating a virtuous cycle of both higher economic growth and human capital development is to give priority to human development. A path that postpones human development until the expansion of economic resources makes it affordable will make economic growth unsustainable and will eventually reduce countries to a vicious cycle, with failures in both human development and economic growth. Evidence showed that no country has succeeded in moving from economic growth-biased development processes to a virtuous cycle. The diversion of resources away from human development, unequal distribution of income and/or low social expenditure ratios invariably leads to unsustainable economic growth.

9. Countries that have been successful in integrating into the world economy, such as the Republic of Korea, Singapore, Malaysia, Mauritius and Ireland, have adopted comprehensive approaches carefully combining targeted investment in human resources with investment in physical capital and industries. Countries that have made early progress in human development have a better chance of sustaining their human resources record during difficult economic downturns and periods of adjustment.

10. Progress in human resources development in general is far from uniform throughout the world, with huge disparities between and within countries. In the majority of developing countries, maintaining adequate capital investment rates and sustained investment in human development has proven to be very difficult. Poor

countries have not been able to maintain a sufficient level of savings and investment rates to meet both economic growth and human development. In most situations, there is either (a) good economic growth but poor human development because of low public expenditure, or (b) good human development but poor economic growth because the investment rate is too low. Some countries are caught in a poverty trap of severe resource constraints resulting in low saving rates, low tax revenues and low foreign investment. This is likely to be accompanied by violent conflicts, brain drain, high birth rates and rapid population growth, environmental degradation and a low level of innovation, all of which adversely reinforce and amplify poverty and further deplete the human resources base.

11. HIV/AIDS, brain drain and rapid economic, social and technological changes have contributed to the further depletion of the scarce resources of developing countries and of their capacity to build the human resources necessary to create and sustain economic growth. The scale and magnitude of the HIV/AIDS epidemic is unique because it affects the young and most productive members of society. In many countries, AIDS is rolling back decades of development advances, deepening poverty, reversing achievements in education, diverting health budgets away from other priorities and reducing economic growth. It is estimated that by 2006, 11 countries in sub-Saharan Africa will have lost more than one-tenth of their labour force to AIDS. In 2004 alone, 3.1 million people died of AIDS, more than 80 per cent of whom were adults in their most productive years. The epidemic is straining local coping mechanisms, generating greater demand for social services, eroding government capacity to deliver basic social services and creating a need for the design and implementation of additional HIV/AIDS programmes, alongside those required for current prevention, treatment and care.

12. The move towards knowledge- and skills-based societies and fast integrating markets has further increased the institutional requirements and pressures on developing countries to integrate in the global economy. The 2005 report of the Secretary-General on globalization and interdependence examines these challenges. The task of developing countries is further complicated by continuous economic, social and technological changes. **To close the skills gap with developed countries, developing countries will need to adopt more comprehensive economic, labour market and social policies promoting economic and employment growth. Supply-side policies, such as those on science and technology, education and training and industry and enterprise will need to be combined with policies that expand aggregate demand in the economy, such as policies targeting the labour market, social issues, investment-friendly economic policies, income distribution and fiscal policies, social security and basic incentives to invest in training.**

13. Financial shocks might also worsen or cause temporary poverty, which negatively affects human resources and exacerbates inequalities in developing countries. Without donor support, transient poverty may lead to chronic poverty. **Donor support should focus on the provisions of insurance programmes, microcredit programmes, crop insurance programmes, employment guarantee schemes and price stabilization policies to help stricken countries deal with the effects of transient poverty and avoid unravelling accrued development gains.**

14. Breaking the poverty trap in some of the poorest countries requires a basic investment in public administration, human resources and key infrastructure.

Without the support of the international community, the poorest countries will not be able to establish an adequate infrastructure and the human resources to enable them to escape the poverty trap. In diverse countries and regions the differences with regard to the affordability of human resources development and external financing needs are extremely large. In sub-Saharan Africa, external aid plays the largest role, since most countries are still in the process of development and possess limited capacity to mobilize domestic funds to build human resources. In the majority of developing countries, poor human development is concentrated in specific regions and in certain segments of the population. Rural areas are generally worse off than urban areas. In many countries, limited rural educational opportunities are the reason for a low overall level of education.

15. The core goal of effective investment in human resources development is to reach the largest proportion of the population and to ensure the sustainability of human resources development through comprehensive human resources development strategies, which should be an integral part of national development strategies, or poverty reduction strategies, where they exist. **Scaling-up investment requires policy coherence and the integration of human resources development into the overall national development strategies in order to ensure effective and sustainable investment in addition to national commitment and partnership among all development partners to ensure adequate allocation of resources.**

B. Gender mainstreaming and gender equality in human resources development

16. Women continue to be among the disadvantaged groups denied opportunities that are central to participation in the social, political and cultural life of society. This is mainly the result of their limited access to education, skills training, health care and employment.

17. The exclusion of women has an important impact not only on their well-being and development, but also on the ability of countries to reduce poverty and facilitate economic growth. There is abundant evidence that the education of the female populations improves child nutrition and survival levels: the higher the level of schooling received, the lower the number of children born and the lower the rate of infant mortality. A study in Brazil indicates that an increase in the non-labour income of women increases the probability of child survival by 20 times that of an equivalent increase in the non-labour income of men.

18. The assumption is that enhancing female access to education, skills training, health care and employment will reduce overall poverty and positively affect sustained human resources development and economic growth. It would also reduce inequalities in income distribution and employment opportunities and conditions. Economists increasingly utilize economic efficiency rationales to encourage investment in women's development and capacity.

Gender equality and economic efficiency

Research on agricultural productivity in Africa shows that reducing gender inequality could significantly increase agricultural yields. For instance, studies have shown that giving women farmers in Kenya the same level of agricultural inputs and education as men could increase yields of farms by more than 20 per cent.

Research on economic growth and education shows that failing to invest in women's education can affect the growth of the gross national product (GNP). Everything else being equal, countries in which the ratio of female-to-male enrolment in primary or secondary education is less than .75 can expect levels of GNP that are roughly 25 per cent lower than countries in which there is less gender disparity in education.

Gender inequality also reduces the productivity of the next generation. The World Bank reports mounting evidence that increases in women's well-being yield productivity gains in the future. The probability of children being enrolled in school increases with their mothers' educational level and extra income going to mothers has more positive impact on household nutrition, health and education of children than extra income going to fathers.

19. The bias against women having access to land and credit partly explains why poverty among women is more widespread. In most countries, women and men are active in different sectors and occupations in the formal and informal sectors. Women are also more likely than men to be in low-paid jobs and "non-standard" work (part-time, temporary, home-based) and are more likely to have less access than men to productive assets such as education, skills, property and credit. These patterns mean that economic trends and economic policies are likely to affect women and men differently.

20. Governments throughout the world are already taking action to promote better access by women to education, training and skills development in various ways. Women are among those specifically targeted by many government training and employment support programmes. Training programmes for girls and women have been successful in improving the level of their skills and their employability. This is particularly true of training that is geared to market opportunities and provided as part of an integrated and targeted set of measures to promote the labour market inclusion of women, as opposed to stand-alone programmes.

21. **To enhance the well-being and economic potential of women, a gender perspective should be mainstreamed in the analysis and formulation of human resources development policies. This will help redress gender differences and inequalities in human resources development and improve access to productive activities. Targeted activities to promote the advancement of women and gender equality should also be promoted in order to address serious gender gaps, support women's empowerment and develop their leadership capacities.**

22. A first step to developing gender-based human resources strategies and policies in developing countries is to build their statistical capacity to collect and analyse sex-disaggregated data. This will increase their capacity to understand and address development issues, including human resources development and economic growth, from a gender perspective. It will also facilitate the formulation of appropriate policies and programmes, including mechanisms and institutions to enable the expression and integration of gender concerns in the decision-making process. A key challenge will then be to translate research and knowledge on gender perspectives at the micro-level into macro-level policy, planning and institutional development decisions. Commitment to identifying gender perspectives in human resources development, as well as in all other policy areas, is fundamental to this endeavour and to the formulation of appropriate strategies.

23. **Subsequent steps to enhance gender mainstreaming and equality in human resources development should focus on: developing a quantitative measure of the contribution of women to the economy; developing sex-disaggregated data for the formulation of human resources development policies and strategies that are gender sensitive; identifying institutional changes that allow the increased participation of women in the economy; facilitating consultation and participation of women in policymaking and in all phases of development activities; and investing greater resources to the enhanced understanding of gender impacts and monitoring progress.**

C. The role of knowledge, science and technology, including information and communication technologies, in human resources development

24. The recent report of the United Nations Millennium Project and the report of the Secretary-General, "In larger freedom: towards development, security and human rights for all" (A/59/2005), have both highlighted the importance of science, innovation and technology in realizing the Millennium Development Goals and related national development priorities. Building institutions and a critical mass of knowledge and technical workers to advance science, technology and innovation is a clear goal of the Millennium Development Goal-based development initiatives of many countries seeking to build strong economies and to participate fully in technology-driven global business development. Information and communication technologies have an important role to play in this area. The strategic, widespread, intensive and innovative use of information and communication technologies in national development polices and programmes can facilitate the achievement of the internationally agreed development goals, including those contained in the Millennium Declaration, and can increase the pool of trained people needed to advance science and technology. Knowledge, science and technology, especially information and communication technologies, the key building blocks for future economic and social development and job creation, require an enormous social investment in the promotion of scientific and technological capacities. Poor countries have largely been spectators, or at best users, of the technological advances produced in high-income countries.

25. **There is a need to build the scientific and technological capacities of developing countries, which will help promote their economic growth and solve**

their scientific challenges. In the case of information and communication technologies, while not all countries have sufficient infrastructure, incentives and partnerships in place to develop such a technology sector, all countries could benefit from using these technologies.

26. Information and communication technologies can empower people to make better choices through improved information flows, increased formal and informal educational opportunities and human as well as institutional capacity development. They can also directly spur economic growth by creating opportunities and addressing barriers and inefficiencies through increased transparency and accountability.

27. Information and communication technologies are finding their way in virtually every sector of the economy and all aspects of social life, from the workplace to health care and education, to governance and human rights. They are becoming an important tool for human resources development, in advocacy, information access and dissemination, and as a tool for disseminating knowledge and facilitating learning. Increasingly, the programmes, strategies and methods of institutions rely on information and communication technologies to provide education and training.

28. Access to such technologies, however, remains an important challenge for many developing countries, some of which, especially countries in sub-Saharan Africa and the least developed countries, lack sufficient access to telecommunications. Yet even when telecommunications systems are installed and accessible, without literacy and basic computer skills, people will have little ability to access the network society.

29. The increasing profile and importance of the use of information and communication technologies in the educational sector are visible in many developing countries. These technologies are now used widely for education in many least developed countries. More needs to be done, however, to establish the effectiveness of ICT investments in education, in promoting educational reform in general and Education for All goals in particular. The challenges facing education systems in most of these countries are formidable and sometimes intractable. In countries in which the teacher corps has been ravaged by AIDS, where the number of schools is grossly inadequate, where equal educational opportunities for girls are lacking and where desperate poverty exists, information and communication technologies can play a role in helping to overcome these challenges.

30. E-learning is making inroads in schools, colleges, community centres, training institutions and universities. The flexibility and affordability of information and communication technologies in developing countries, when available, has helped reduce the costs associated with human resources development, including educational costs and the cost of health-care services. For example, information on prevention and diseases is disseminated more effectively online, while access costs for consumers to health-care centres are being reduced. The flexibility and affordability of information and communication technologies has also helped to maximize human capital gains, since it has proved to enable more effective ways of learning. Distance learning programmes are expanding at a rapid pace. "Mega-universities" provide distance learning programmes to some 2.8 million students a year.

31. The rapid expansion of distance learning generated by information and communication technologies has also had the effect of increasing the access of disadvantaged groups, including people living in remote communities, to information and learning opportunities, presenting an unprecedented opportunity to focus on and address more systematically the specific human resources needs of these groups and to better target action. A classic example is the Telesecundaria programme in Mexico, which reaches some 700,000 students in 100,000 small, remote communities with few schools and teachers. In some countries, information and communication technologies are playing an important role in counteracting brain drain. Internet exchanges can play a significant part in recapturing the expertise of expatriates, who transfer knowledge and technology to their home country, thus contributing to human resources development. In the 1990s, the Internet was key to the growth of expatriate organizations. In this regard, the United Nations Information and Communication Technologies Task Force has helped establish African and Caribbean diaspora networks in North America and Europe.

32. In a development strategy driven by information and communication technologies, capacity-building and infrastructure development need to be shaped by a vision of the competencies and skills that people need to acquire in using the new technologies. These technologies, which have changed the nature of work and the type of skills required in most fields and professions, pose a challenge to educational systems that must produce workers with the requisite skills and who are adaptable and receptive to lifelong learning.

33. **An effective use of information and communication technologies for human resources development in developing countries should rely on favourable national policies, government support and regulatory frameworks, as well as increasing access to such technologies and the capability to use them. Government policies should also facilitate the active engagement of the private sector and all relevant stakeholders in building the necessary infrastructure for the development of information and communication technologies and related skills. Realistic plans based on a good knowledge of the local needs, culture, practices, support and accessibility of resources should be the basis for capacity-building programmes in this area.**

D. The role of the public sector in human resources development

34. Public investment, which is key to any human resources development leading to sustained economic growth, requires spending in critical areas such as health, education, infrastructure, environmental management (including water and sanitation), information and communications, scientific research and land for affordable housing. Accountable and efficient public administration of all these areas is essential to national development, which, in turn, depends on the quality of human resources in the public sector. It is people, coordinated by institutions, who deliver public services such as health care and education. When public institutions perform well, it is primarily because of the motivation, skills and integrity of the human resources and the quality of leadership.

35. The *World Public Sector Report 2005* explores principles and techniques to enhance the quality and effectiveness of public administration and human resources management. The presence of a merit-oriented and career-based civil service is

decisive in explaining differences between countries in the performance of Governments in terms of quality of services and absence of corruption.

36. Among the important challenges, the report identifies the need to incorporate or reinvigorate desirable traditional civil service values, such as impartiality, integrity and dedication to public service, while at the same time promoting management innovations and efficiency, as well as encouraging forms of administration that are more open and responsive to new challenges and needs. Strong stakeholder engagement, including business and social organizations, would help increase the effectiveness and sustainability of public services. The engagement of these stakeholders would also ensure the relevance of public investments, lead to decisions that best address public needs, and serve as watchdogs for the development and implementation of government policies. By placing a greater emphasis on openness, partnerships and networking with stakeholders, it would be possible to draw on additional skills and resources and to ensure an impartial, professional and responsive public sector.

37. For example, access to and delivery of health services to rural communities should be designed with the participation of these communities, health-care providers and all other affected groups. This would help to: create a public service that better reflects the needs of both health-care recipients and providers (community members and nurses and physicians); augment its quality and sustainability over time; and ultimately improve the health status of rural communities. In the same vein, this approach should be used for human resources planning purposes and as a tool for recruiting health-care providers to service rural and remote communities.

38. **In order to help developing countries to build their public sector capacity it is essential that the international community provide support by developing and managing the necessary human resources and assisting them to set in place broad-based consultative approaches with national stakeholders for the design and implementation of effective and responsive public services.**

39. **The international community has an essential role in supporting developing countries to counter balance the loss of skilled and experienced public servants to migration or HIV/AIDS.**

E. United Nations system efforts to support human resources development in developing countries

40. Human resources development has featured prominently in the United Nations development framework, which highlights its importance for economic growth and sustainable development. Over the years, the development community, including the United Nations system, has increasingly focused on the relationship between human resources development and sustainable development. The achievement of the Millennium Development Goals is viewed as being directly or indirectly influenced by national human resources development policies and strategies. Available research and analysis show how human resources development is linked to the attainment of most of the Millennium Development Goals. In particular, poverty reduction, gender equality and prevention of HIV/AIDS, malaria and other diseases in developing countries are all directly affected by or affect human resources strategies.

41. Through the Millennium Development Goal framework, the development community and the United Nations are addressing the many dimensions of human development. Human resources development is taking on a new importance in the development agendas of many organizations of the United Nations system that are supporting national poverty eradication efforts. Many of these organizations have integrated a focus on human capacity development in their programmes and activities and seek to enhance national capacity to monitor and assess progress in pursuing this objective in the context of the Millennium Development Goals. For example, the work of the International Labour Organization (ILO) is guided by the human resources development recommendation No. 195, adopted in June 2004, which emphasizes education, training and lifelong learning. Similarly, Education for All is a key framework for the United Nations Educational, Scientific and Cultural Organization (UNESCO), as is basic health services for all for the World Health Organization (WHO). The United Nations Development Programme (UNDP) promotes understanding the concept of human poverty as a complement of income poverty, advocates nationally owned solutions and helps to make them effective through ensuring a greater voice for poor people, expanding access to productive assets and economic opportunities and linking poverty programmes with the international economic and financial policies of the targeted countries.

42. In the United Nations common strategic framework for development cooperation policies, such as the common country assessment/United Nations Development Assistance Framework process, human capacity development features prominently in support provided to national efforts to formulate national poverty eradication strategies based on local needs and priorities. The effectiveness and impact of United Nations system support will be enhanced by increasingly more comprehensive and integrated approaches by system agencies in this area, within the Millennium Development Goal framework. The report "One United Nations: Catalyst for Progress and Change", prepared by the United Nations System Chief Executives Board for Coordination, provides an analytical overview of how the organizations of the United Nations system are working together to help countries achieve the objectives set out in the Millennium Declaration. Significant progress has been made by the United Nations system in better integrating such a framework in its programmes and activities. The goals have helped galvanize inter-agency collaboration and joint initiatives, including strategies to achieve the objectives of the Education for All initiative by 2015. The United Nations Children's Fund (UNICEF) is also leading the girls' education initiative, a 10-year sustained effort to promote girls' education, involving 13 United Nations entities.

III. The impact of the migration of skilled labour and people with advanced education

A. Level and characteristics of migration of skilled labour

43. Over the last few years, issues related to international migration, especially migration of highly skilled workers, have received increasing attention from policymakers. The issue of international migration is addressed in a comprehensive way, in the 2004 *World Economic and Social Survey*. This increased attention reflects the sharp rise in the international demand for skilled labour generated by the evolution of modern economies and the forces of globalization over the last decade

and a half, which have resulted in a significant outflow of educated elites from developing to more developed countries.

44. Broadly, migration of skilled labour and people with advanced education has been stimulated by: a global economy that is becoming increasingly knowledge-intensive and values higher education and better skilled labour; increasing wage inequality and the unbalanced professional opportunities in different countries and regions, in particular between more developed and less developed economies; and recruitment policies of more developed countries, designed to ease shortages of skilled workers in their labour forces.

45. Uneven and unsteady global labour market conditions and demographic imbalances, in particular between developed and developing countries, may also contribute to the acceleration of international mobility. Highly skilled people have migrated regionally or further abroad where they could improve their economic and professional perspectives. For talented and highly skilled people, emigration sometimes represents the only way to attain better job opportunities, higher salaries and/or access to technical facilities, infrastructures and the research and development opportunities to expand their careers.

46. The boom in information and communication technologies has further enhanced the role of human capital in economic growth and contributed to this outflow, although competencies and skills in this field are not the only ones in demand. Ageing populations in most countries of the Organization for Economic Cooperation and Development (OECD) and the related increase in health-care requirements have increased the demand for medical personnel. Doctors, nurses, nursing aids and assistants are particularly sought after in the United States of America, the United Kingdom of Great Britain and Northern Ireland, Canada and many other OECD countries. Increasingly, professionals in the health and information and communication technology fields move from India, Pakistan, South Africa and the Philippines to countries offering greater opportunity, including Canada, Germany, the United Kingdom and the United States. By 2000, it was estimated that 30 to 50 per cent of information technology workers and 60 per cent of physicians in the Philippines had emigrated overseas, mostly to English-speaking countries, often facilitated by bilateral agreements with host countries. The same applies to teachers, translators, and specialists in science and technology, and in the biomedical and agro-food sectors.

47. Competition among industrialized nations to attract the human resources that they lack and to retain those who might emigrate is intense. Many countries amended their legislation in the late 1990s to facilitate the entry of skilled foreign workers and to give foreign students access to their labour markets upon graduation. Most countries introduced greater flexibility in their existing labour migration policies, while others also launched more specific recruitment programmes to meet labour shortages. In addition to immigration policy measures, some OECD countries have introduced specific fiscal incentives to attract highly skilled migrants. Some of these offer virtually income-tax-free status for up to five years or large tax deductions for certain categories of highly qualified personnel, for example: 25 per cent in Sweden, 30 per cent in the Netherlands, 35 per cent in Austria or 40 per cent in the Republic of Korea. New legislation along the same lines has been recently adopted in France and is under consideration in New Zealand. At the same time, some countries have also taken steps to encourage nurses and doctors to stay in their

home countries, for example through the Commonwealth Code of Practice for the International Recruitment of Health Workers (2003).

48. The acceleration of the mobility of highly skilled labour, in particular from developing to developed countries, has once again raised concerns about the "brain drain" and the resulting loss of economic potential in the countries of origin. Developing countries experience shortages in a number of highly skilled occupations affecting vital sectors, such as health care and education. This could potentially undermine not only their economic growth, but also their ability to achieve the Millennium Development Goals. Data indicate that 56 per cent of all emigrating physicians move from developing to developed countries, while developing countries receive only 11 per cent of emigrating physicians, principally from other developing countries. Rates are even higher for nurses. Developing countries invest about $500 million each year, an amount equivalent to roughly 25 per cent of the total official development assistance developing countries receive for the health sector, in training health-care professionals, who are then recruited by or otherwise move to developed countries.

49. Despite this increased mobility and the heightened concern about its impact, the quality and comparability of international data on migration have not been sufficiently well kept to inform policymakers on ways to manage it. There has been no systematic empirical assessment of its dynamics, determinants and impact, especially its impact on the human resources and economic growth of the developing countries themselves.

50. While receiving countries and migrants are generally believed to profit from the opening up of borders to the international migration of highly skilled labour, which adds to their accumulation of human capital and knowledge, the impact on countries of origin is not so clear. The effects of migration tend to be seen as an erosion of the human resources base, which can have a negative impact on the economic and social development of home countries and increase their economic dependency on remittances from savings abroad. Negative effects are also visible on productivity, research and development, tax revenues and the opportunity cost of public expenditure on education. Potential favourable effects from migration of skilled labour include potential technology and knowledge transfer and capital investments by overseas or returning workers. The magnitude of the brain drain is also relevant to its overall impact. Additional analysis is needed to assess the magnitude of the impact of the brain drain on human resources development.

51. A recent study of immigrants in OECD countries shows that migration of skilled labour affects developing countries in different ways, depending on their size. The study indicates that the highest brain-drain rates (emigration of highly skilled labour as a proportion of the potential educated labour force in sending countries) are observed in the Caribbean, Central America and Western and Eastern Africa. Countries with populations below four million have been the most affected. Emigration rates exceed 80 per cent in Suriname, Guyana and Jamaica.

52. This study indicates that small countries are more adversely affected by emigration of highly skilled workers, which prevents them from reaching a critical mass of human resources necessary to foster long-term economic development. Larger countries, on the other hand, seem not to be significantly affected and indeed may benefit from the indirect effects associated with such mobility (including return migration, knowledge and technology transfers and remittances).

53. Some poor countries are more vulnerable because human capital accumulation has been the result of enormous public investment efforts made in the context of tight public budgets. For example, it is estimated that each emigrating African professional represents a loss of $184,000 to Africa and that South Africa alone has lost more than $5 billion owing to the migration of highly skilled labour between 1997 and 2001.

54. In developing countries, the international mobility of highly skilled workers undoubtedly presents a serious challenge. Economic theory and available research suggest that the direct impact of brain drain is the loss of a sizeable number of highly educated nationals abroad, which represents a reduction in the stock of human capital or knowledge so critical to productivity and economic growth. It also sets in play a number of forces that can lead to economic growth. The positive example of some countries, in which migration of skilled labour triggered a virtuous cycle of economic growth, creates an incentive for developing countries to manage rather than control migration.

B. Management of highly skilled labour migration and policy options for developing countries

55. Skilled workers are likely to become more mobile in international labour markets. Economic theory has identified significant positive effects of skilled emigration. For example, return migrants bring back skills, work experience and savings as a boost to productivity. Expatriates contribute significant capital inflows through remittances and transfer of knowledge and technology through networks maintained with the countries of origin, which can increase productivity and economic growth of the home countries. Neoclassic models, on the other hand, find that a high level of skilled emigration slows economic growth and "new growth" models find even greater reduction of economic growth and increases in poverty. Recently, using the concept of "brain circulation", the migration of skilled workers is being seen as a component in the flow of goods and information in a global economy. It emphasizes the potential for exchanges rather than losses between countries and identifies the need to engage appropriately in the exchange of skills in the global labour market as a central challenge for developing countries.

56. The effects of the emigration of highly skilled labour on the development of human resources and the economic growth of developing countries depend on whether or not the loss of such labour ends up being a medium- to long-term drag on economic growth. The extremes are exemplified by Indian information technology (IT) workers and African health-care workers. The emigration of Indian IT professionals set in motion virtuous cycles that led to new industries and jobs and improved the quality of IT services throughout India. This suggests that non-migrant Indians also benefited through knowledge and technology transfers, which generated human capital increases and capital investment in the country. The Indian example illustrates that returnees can indeed bring valuable management experience, entrepreneurial skills and access to global networks, and even venture capital. The resulting increase in human capital through knowledge and technology transfer also makes the country more attractive to local and foreign investors, triggering a virtuous cycle of economic growth. On the other side of the spectrum, the emigration of African doctors and nurses has reduced the availability of skilled workers in the continent. This has in some cases led to worse health care, especially

in rural areas, discouraged investment and triggered a vicious cycle of declining productivity and income. Since doctors and teachers cannot quickly be replaced internally, because of the delayed return on education, their migration necessarily brings a net loss from "brain drain".

57. A recent ILO study explores possible policy responses for developing countries to international mobility of skilled labour that might help to reduce or offset its negative effects. The study promotes policies that focus on improving domestic opportunities in the education sector, target domestic economic growth and reduce the incentive to emigrate. Giving people a reason to stay (or to return) is doubtless the most effective policy for reducing emigration and the surest long-term means of boosting the average level of human capital and economic growth. The study also identifies policies designed to reap benefits from the expatriate population, or "diaspora", as an effective way of offsetting the negative effects of migration. Much of this happens on its own, as there is a natural proclivity for emigrants to maintain ties with their home country through human and financial networks. This generates flows of knowledge, technology, investment and trade to and from their home country, which is also facilitated by contacts between home and host country academic and private sector institutions and migrant associations. Whether emigrants are permanent or short-term, their linkages with the home country may offer significant benefits that offset the loss from brain drain.

58. There is no single, simple policy option that could guarantee a win-win outcome, where all stakeholders, migrants, countries of origin, receiving countries, would gain from the international mobility of skilled workers. The policies of developing countries encouraging short-term migration, returns and remittances are more likely to trigger a virtuous economic cycle. In the case of Taiwan, Province of China, remittances and returns have hastened an economic expansion led by knowledge and technology transfer and capital investments from the information and communication technology sector. There are, however, only a few similar cases (India and the Republic of Korea). More often than not, countries of origin fall into a vicious cycle in which professionals flee their countries of origin, which then experience net losses in terms of human capital and economic growth. These countries are generally left with very limited policy options. Restrictive emigration policies aimed at maintaining the human resources base needed to achieve economic expansion are difficult to sustain, for it is often hard for graduates to find good jobs locally. In addition, home countries face fierce competition from developed countries for such labour. **The increasingly high mobility of skilled labour and the worldwide competition for these workers will make it increasingly necessary to shift from "migration control" to "migration management".**

59. Policy reforms aimed at attracting or retaining highly skilled labour in developing countries should not only be driven by competition for human resources, but should also take into consideration other policy dimensions. **Home countries should combine investment in human resources development with economic incentives to strengthen labour markets and institutions; they should also facilitate and foster indigenous entrepreneurship and innovation.** The relative success of India, Taiwan, Province of China, the Republic of Korea and Ireland in attracting return migration has been attributed to the opening of their economies and to policies fostering investment in innovation and research and development. It has also been attributed to the fact that these countries not only support the upgrading of established producers but also indigenous entrepreneurship. The Government of the

Republic of Korea launched a training programme for return migrants, and within the first six months of its establishment, 4,000 workers were reported to have participated in the scheme. The Bureau of Foreign Employment of Sri Lanka has adopted reintegration programmes, including loan schemes and scholarships for the education of the children of returning migrants. The Governments of Uruguay and Argentina have implemented policies that favour the return of migrants through the provision of tax exemptions for the products brought back by migrants.

60. Migrant associations around the world have the explicit purpose of gathering resources to support hometown projects or connect country nationals, entrepreneurs and professionals, while promoting the exchange of skills and knowledge. Some of these networks are directly promoted by home country Governments, for instance the three-for-one programme in Mexico in which migrants, and the local, state and federal governments each share 25 per cent of the cost of a particular hometown project.

61. Support of the international community to initiatives encouraging the exchange of knowledge between professionals in home countries and the diasporas have had positive results that may be further supported. The United Nations Information and Communication Technologies Task Force, along with the United Nations Development Fund for Women (UNIFEM), the United Nations Fund for International Partnerships, the Digital Partners Institute and Grupo Cerfe (Banco Interamericano de Desarrillo) have developed an initiative for Africa. Since 2002, this initiative has already developed an African database of information and communication technology skills, a social venture fund for Africa and a steering committee to manage the implementation of the process (the Digital Diaspora Network for Africa). A similar partnership has been established in 2003 for the Digital Diaspora Network for the Caribbean. A different although parallel initiative is the United Nations programme called Transfer of Knowledge through Expatriate Nationals (TOKTEN), by which voluntary expatriate high-skilled migrants are financed to visit their countries of origin for a temporary period of 3 to 12 weeks. During this period, experts work in the Government, universities and public and private enterprises. The programme pays a round-trip airfare ticket and living expenses for the period of service.

62. **Concerted strategies between receiving and home countries, in partnership with international agencies and development partners, to address the issue of skilled labour migration as an integral part of development cooperation efforts could help ensure a more favourable outcome for developing countries from the international mobility process. An important component of these strategies should be the strengthening or building of migrants networks with their home countries to facilitate the flow of knowledge, technology, investment and trade.**

C. Measures to shift from "brain drain" to "brain circulation"

63. Only broad-based approaches to managing migration, involving both countries of origin and destination, aimed at reducing push factors in origin countries and limiting some of the adverse effects of international recruitment in receiving countries, can result in a significant sharing of the benefits attached to international

mobility. If there is to be progress from the "brain drain" to "brain circulation", adequate incentives must come from both origin and destination countries.

64. In the home country, brain circulation could be facilitated through labour and migration policies. **Migration policies that facilitate home visits by migrants, the sending of remittances, the transfer of technologies and tariff reduction on imported equipment from migrants may improve the chances of creating regular contact and strong links with home countries and inducing eventual return. Such policies may further encourage migrants to establish micro-enterprises in the home country.** The software industry is a good example of the way in which cross-border flows of skilled workers have become essential to the way firms in developing and developed countries connect and transact. **Labour policies can address shortages of skilled labour and reduce the pressure of international demand for skilled workers by adjusting domestic salaries or providing enhanced career development prospects in the economic sectors affected.**

65. At the international level, bilateral agreements could increasingly involve highly skilled and qualified labour, such as the temporary programmes for nurses from the Philippines working in Norway and the Netherlands. In general, these agreements provide a means for countries to strengthen coordination of migration issues and provide protection to their nationals abroad while safeguarding the well-being of migrants on their own soil. Occasionally host countries also offer the opportunity to improve the skills of immigrants, leading to significant transfers of skills and technology to their home country. At the multilateral level, **stakeholders should work together to establish good practices in the employment of highly skilled labour. Countries should agree on a global arrangement to manage employment, recruitment, training and work permit schemes to facilitate brain circulation, ensure fair competition for skilled labour and ultimately benefit all stakeholders. This sensitivity to shared responsibilities should be reflected by public and private institutions in charge of employment, recruitment, training and work permit schemes in host and recipient countries.**

66. States, whether countries of origin, transit or destination of migrants, share a common ground in terms of migration interests, concerns, priorities and benefits. **Countries should increase coordination and collaboration at the global, regional and subregional levels in order to share and improve data and information on sectors where there is labour shortage and/or surplus and facilitate mobility and flexibility of labour markets to meet labour demand worldwide.**

67. Multilateral initiatives, which are already in place in many regional blocs, including MERCOSUR (the Common Market of the South), the Andean Community and the Central American Integration System, include specific recognition of the importance of migration. **In this regard, subregional integration agreements offer suitable opportunity for dealing with migration as a vital component of partnerships between members who share greater similarities in terms of their socio-economic conditions. Efforts to strengthen the bilateral, regional and multilateral agreements to facilitate labour mobility should be supported. Countries should be encouraged to undertake the bilateral, regional and interregional consultative processes that are central to the development of**

cooperative migration management and contribute to cooperation at the global level.

68. International migration has important implications for other areas and policies. The multilateral agenda must include efforts to systematically address questions of migration in other processes. For example, migration should be addressed in cooperative programmes between regions and by regional organizations, as well as in global forums concerned with trade, environment and taxation. Free trade area agreements such as the North American Free Trade Agreement (NAFTA), have integrated some dispositions related to the free movement of certain categories of professionals. Policy changes that liberalize migration across international borders may give rise to "gains from trade" even as they may increase the competitive pressures on national and subnational fiscal systems. The ongoing negotiation process of the General Agreement on Trade in Services (GATS), Mode 4, which rules the movement of natural persons to provide services, may standardize definitions on occupations and duration of stay of foreign workers and have far-reaching effects on the movement of highly skilled labour. Other intergovernmental consultation processes and international initiatives are contributing to placing migration on the global agenda and managing this phenomenon for the benefit of all. The General Assembly resolution on international migration and development and the establishment by the Secretary-General of a Global Commission on International Migration (GCIM) are important steps in this direction. Recognizing the increasing importance of this issue, the Assembly also decided to hold a high-level dialogue on international migration and development in 2006 in order to discuss its multidimensional aspects and identify ways and means to maximize its developmental benefits and minimize its negative impacts.

Notes

[1] United Nations Development Programme, *Human Development Report*, 1990.

[2] Amartya Sen, *Development as Freedom*, Random House, New York, 1999.

[3] Gustav Ranis and Frances Stewart "Strategies for Success in Human Development", Queen Elizabeth House Working Paper Series (QEH WPS32), University of Oxford, January 2000.

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General Assembly

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Sixtieth session
Item 72 of the provisional agenda*
Rights of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretariat

1. In its resolution 2005/2 of 7 April 2005, the Commission on Human Rights decided to end the mandate of the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right to self-determination and to establish a working group, made up of one expert from each of the five regional groups, for a period of three years.

2. The mandate of the Working Group (para. 12 of the resolution) is:

> "(*a*) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;
>
> "(*b*) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;
>
> "(*c*) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;
>
> "(*d*) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;
>
> "(*e*) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic

* A/60/150.

05-47685 (E) 120905

principles that encourage respect for human rights on the part of those companies in their activities."

3. On 29 July 2005, the Chairperson of the Commission on Human Rights nominated the five members of the Working Group: Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), Françoise Hampson (United Kingdom of Great Britain and Northern Ireland), Alexander Ivanovich Nikitin (Russian Federation) and Shaista Shameem (Fiji).

4. At the time of drafting this note Ms. Al-Hajjaji, Ms. Benavides, Mr. Nikitin and Ms. Shameem had officially accepted the offers of appointment.

5. The Working Group will convene its first session from 10 to 14 October 2005.

6. Pursuant to resolution 2005/2, a full report of the Working Group on its first session will be submitted to the Commission on Human Rights at its sixty-second session.

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Item 83 of the provisional agenda*
Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report has been submitted pursuant to paragraph 12 of General Assembly resolution 59/45 of 2 December 2004. It highlights the measures for the further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions; reviews the capacity and modalities within the Secretariat for implementing the intergovernmental mandates and for addressing the main findings, including recommendations of the ad hoc expert group meeting on assistance to third States affected by the application of sanctions (A/53/312, sect. IV); and notes the recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

* A/60/150.

05-47775 (E) 220905

Contents

		Paragraphs	*P*
I.	Introduction	1	
II.	Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions	2–8	
III.	Review of the capacity and modalities of the Secretariat for implementing the intergovernmental mandates and recommendations of the ad hoc expert group meeting on assistance to third States affected by the application of sanctions	9–12	
IV.	Views provided by Governments and relevant international organizations regarding the report of the ad hoc expert group meeting and related issues of international assistance to third States affected by the application of sanctions	13–14	
V.	Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions	15–18	

I. Introduction

1. At its fifty-ninth session, the General Assembly adopted resolution 59/45 of 2 December 2004, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions", in which, inter alia, it requested the Secretary-General to submit a report to the sixtieth session on the implementation of the resolution. The present report has been prepared pursuant to that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. Paragraphs 1 to 3 of General Assembly resolution 59/45 relate to the further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions. Information regarding the implementation of these provisions is set forth below.

3. In a letter to the President of the Security Council dated 17 December 2004 (S/2004/979), the outgoing Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions observed that, after thorough discussion and assessment of the practice of the Council in the use of sanctions, the Group had come to the conclusion that many of the recommendations identified during its previous discussions and highlighted in the Chairman's proposed outcome, coupled with ideas advanced at the Interlaken, Bonn-Berlin and Stockholm processes, had resulted in tangible and concrete changes during the past several years. In this connection, it was noted that the Security Council, in relevant cases, had sought an assessment of the possible humanitarian impact of measures it had authorized, with a view to minimizing the unintended negative consequences of such measures. The letter also noted that various reports by expert sanctions monitoring bodies had included recommendations for improving the implementation and effectiveness of sanctions as well as for mitigating their unintended impact. In his letter, the Chairman also noted that interested parties may review the Chairman's proposed outcome on the Internet (see http://www.un.org/Docs/sc/committees/sanctions/Prop_out10.pdf).

4. In a note dated 23 December 2004 (S/2004/1014), the President of the Security Council observed that, after consultations among the members of the Council, it had been agreed that the mandate of the Informal Working Group on General Issues of Sanctions should be extended until 31 December 2005. While the new mandate of the Working Group was still to develop general recommendations on how to improve the effectiveness of United Nations sanctions, the Working Group was also mandated, inter alia, to discuss within this framework, as appropriate, and with the consensus of its members, a number of sanctions-related issues, including the assessment of the unintended impact of sanctions and ways to assist affected untargeted States. In a note dated 5 January 2005 (S/2005/4), the President of the Council stated that, following consultations among the members of the Council, it

had been agreed that Augustine P. Mahiga of the United Republic of Tanzania would serve as Chairman of the Working Group for the period ending 31 December 2005.

5. During the reporting period, there were no pre-assessment reports or ongoing assessment reports concerning the likely and actual unintended impact of sanctions on third States. Nevertheless, a number of reports mandated by the Security Council touched upon the humanitarian and socio-economic consequences of sanctions. At its 4981st meeting, held on 3 June 2004, the Council was addressed by the Chairman of the National Transitional Government of Liberia, Charles Gyude Bryant. In his statement, Mr. Bryant called for the Council to lift the prohibitions on the import of diamonds, round logs and timber products from Liberia in the light of the need to revive the country's economy and create jobs for ex-combatants. He noted the role of timber and diamonds as foreign exchange earners for the economy of Liberia and he requested the Council to send its Panel of Experts to Liberia to validate Liberia's performance in meeting the conditions set out by the Council for the lifting of sanctions. On 17 June 2004, the Council adopted resolution 1549 (2004) by which the Council, inter alia, took note of the views expressed by the Chairman of the National Transitional Government of Liberia to the Council on 3 June 2004 and reappointed the Panel of Experts to undertake tasks including the submission of a midterm report by 30 September 2004. The report was to take into consideration progress made towards meeting the conditions for the lifting of sanctions on diamonds and timber (see S/2004/752). The Panel was also requested to assess the socio-economic and humanitarian impact of the sanctions measures as part of its final report under resolution 1549 (2004) (see S/2004/955).

6. In its resolution 1579 (2004) of 21 December 2004, the Security Council extended the prohibition against the import of rough diamonds from Liberia for a period of six months while the other time-bound sanctions measures were extended for a period of 12 months. In previous resolutions concerning sanctions on Liberia, the diamond sanctions had always been extended for 12-month periods (see resolutions 1343 (2001), 1408 (2002), 1478 (2003) and 1521 (2003)). By resolution 1579 (2004), the Council also decided to re-establish the Panel of Experts to undertake certain tasks, including assessing progress made towards meeting the conditions for the lifting of sanctions and assessing the humanitarian and socio-economic impact of the sanctions. In a report transmitted in a letter dated 16 March 2005 from the Chairman of the Committee to the President of the Council (S/2005/176, annex, enclosure), the Panel of Experts provided a preliminary assessment of the progress made towards meeting the conditions for lifting the measures on diamonds. In a subsequent report transmitted in a letter dated 13 June 2005 from the Chairman of the Committee to the President of the Council (S/2005/360), the Panel of Experts outlined various observations and recommendations relating to the humanitarian and socio-economic impact of the sanctions concerning Liberia. In its resolution 1607 (2005) of 21 June 2005, the Council extended the prohibition against the import of rough diamonds from Liberia for a period of six months. By the same resolution, the Council also decided to re-establish the Panel of Experts to undertake specific tasks, including assessing progress made towards meeting the conditions for the lifting of sanctions and assessing the humanitarian and socio-economic impact of the sanctions.

7. In the period under review, no sanctions committees were approached by Member States concerning special economic problems arising from the implementation of sanctions. During the same period, the Security Council

continued its recent practice of imposing targeted sanctions measures that help to minimize unintended economic problems for States. This trend can be amply illustrated by the following examples. By resolution 1572 (2004) of 15 November 2004, the Council imposed an arms embargo on the territory of Côte d'Ivoire. The same resolution also established a travel ban and assets freeze, which entered into force on 15 December 2004, to be imposed against those individuals designated by the Committee in accordance with the criteria set out in the resolution. Similarly, by resolution 1591 (2005) of 29 March 2005, the Council imposed an arms embargo on the states of North Darfur, South Darfur and West Darfur in the Sudan. In the same resolution, the Council also established a travel ban and assets freeze, which entered into force on 29 April 2005, to be imposed against those individuals designated by the Committee in accordance with the criteria set out in the resolution. By resolution 1596 (2005) of 18 April 2005, the Council amended and expanded its existing arms embargo concerning the Democratic Republic of the Congo and established a travel ban and assets freeze to be imposed against those individuals designated by the Committee in accordance with the criteria set out in the resolution.

8. As noted in paragraph 10 of the previous report of the Secretary-General (A/59/334), as a result of the modifications made to the Iraq sanctions regime since May 2003, all of the Council's existing sanctions regimes are now targeted in nature and the unintended consequences for civilian populations and third States are thereby minimized.

III. Review of the capacity and modalities of the Secretariat for implementing the intergovernmental mandates and recommendations of the ad hoc expert group meeting on assistance to third States affected by the application of sanctions

9. The Secretary-General has taken note of paragraph 4 of General Assembly resolution 59/45, in which the Assembly requested him to pursue the implementation of the relevant Assembly resolutions[1] and to ensure that the competent units within the Secretariat develop the adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to: collate and coordinate information about international assistance available to third States affected by the implementation of sanctions; continue developing a possible methodology for assessing the adverse consequences actually incurred by third States; and explore innovative and practical measures of assistance to the affected third States.

10. In this regard, it should be noted that the arrangements put in place in the Secretariat in 1996, as described in the report of the Secretary-General (A/51/317, paras. 4-11), as well as in his reports of 1997 and 2002 (A/52/308, para. 5, and A/57/165, para. 9), continue to apply. It should be noted that, since these arrangements were based on existing resources, the overall budgetary resources currently available to the Departments concerned would have to be maintained into the future.

11. It is also understood that the existing arrangements for interdepartmental cooperation do not preclude further cooperation between the relevant Departments,

as appropriate, and that the setting in motion of the functions contemplated in several subparagraphs of paragraph 3 of General Assembly resolution 50/51 of 11 December 1995 depends on a request by the Security Council, its organs or interested Member States.

12. The Secretary-General has provided and will continue to provide his full support for the intergovernmental deliberations on issues under review, as well as his views and recommendations as required, in order to ensure the implementation of relevant intergovernmental mandates in a timely and efficient manner.

IV. Views provided by Governments and relevant international organizations regarding the report of the ad hoc expert group meeting and related issues of international assistance to third States affected by the application of sanctions

13. In paragraphs 5 and 9 of General Assembly resolution 59/45, the General Assembly, inter alia, renewed its invitation to States and relevant international organizations within and outside the United Nations system that had not yet done so to provide their views regarding the report of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States (A/53/312).

14. No further comments have been received concerning the report of the ad hoc expert group meeting on assistance to third States affected by the application of sanctions (see A/53/312, sect. IV) beyond those summarized in documents A/54/383 and Add.1 and A/55/295 and Add.1.

V. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

15. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in the area of assistance to third States affected by the application of sanctions.[2]

General Assembly

16. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 14 to 18 March 2005.[3] The report summarizes the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions.[4]

Economic and Social Council

17. In a note dated 13 May 2005 on assistance to third States affected by the application of sanctions (E/2005/62), the Secretary-General drew the attention of the Economic and Social Council to General Assembly resolution 59/45, in particular to paragraph 8 thereof, in which the Assembly had transmitted to the Council the previous report in this series (A/59/334).

18. At its substantive session of 2005, held in New York from 29 June to 27 July 2005, the Economic and Social Council adopted decision 2005/312 of 27 July 2005, in which it took note of the note by the Secretary-General (E/2005/62) and the report of the Secretary-General to the General Assembly (A/59/334).

Notes

[1] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25 and 58/80.

[2] During the period under review, there were no developments in the Committee for Programme and Coordination in the area of assistance to third States affected by the application of sanctions.

[3] For the report of the Special Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33).

[4] Ibid., chap. III.A.

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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission resolution 2005/33 of 19 April 2005.

* A/60/150.

05-47781 (E) 041005 051005

Summary

This report identifies the issues that have been of greatest concern to the Special Rapporteur since the sixty-first session of the Commission on Human Rights and describes the main activities that he has carried out. Because this is the first report that this Special Rapporteur has submitted to the General Assembly, the introductory section outlines the basis of his mandate and substantive developments in that regard, which, in turn, reflect the progress made in the field of human rights.

The first substantive issue addressed in the report concerns the delicate situation currently facing the judiciary in Ecuador as a result of the unconstitutional dismissal of the members of the Constitutional Court and the Supreme Electoral Court, followed by the dismissal of the members of the Supreme Court in late 2004. The political and social crisis triggered by these events created a climate of institutional instability of such magnitude that it ultimately led to the ousting of the President of the Republic, Lucio Gutiérrez. The Special Rapporteur conducted two missions to the country: the first in April 2005, during which he called on the authorities to restore the rule of law and appoint an independent Supreme Court, and the second in July 2005 after the new President of the Republic, Alfredo Palacio, had taken office and the National Congress had adopted the reform of the Law on the Organization of the Judiciary, establishing an ad hoc mechanism for selecting the members of the Supreme Court through a Qualifications Committee. To lend greater transparency and credibility to the process of selecting judges, the Special Rapporteur recommended, in accordance with Ecuadorian legislation, that international — and, in particular, United Nations — observers should be asked to oversee the process. In addition, he called on the Qualifications Committee to bring its rules of procedure into line with the Constitution and the international treaties signed by Ecuador. At the time of writing (August 2005), the Committee had just started operating. The Special Rapporteur is therefore planning to conduct another visit a few days before his oral presentation of this report to the General Assembly.

Many States are currently discussing the adoption of national measures that could undermine adherence to international human rights standards. One example is the current debate in the United Kingdom concerning domestic measures applicable to suspected terrorists. Another negative development is the resumption of proceedings before the military commissions established by the United States of America, as they do not comply with international standards concerning the right to a fair trial because they are very closely linked to the executive branch, do not allow appeals to be brought before a civil judge, deny the right to defence and discriminate between nationals and non-nationals. As regards the transfer of Guantánamo Bay detainees to their countries of origin, the Special Rapporteur urges the States concerned to respect the rights which have thus far been denied them.

As regards terrorism, the Special Rapporteur reiterates his condemnation of terrorist practices and expresses his profound sorrow and solidarity with the victims of the bloody attacks carried out in London and Sharm el-Sheikh in July 2005. He also reiterates his conviction that concerted action by the international community is needed in order to effectively combat this scourge. In the report, he notes that there have been a number of setbacks concerning respect for the rule of law and human rights as a consequence of the counter-terrorism measures adopted since the previous

session of the Commission on Human Rights. In particular, he expresses his concern at the dangerous tendency to roll back existing levels of international protection.

As regards the International Criminal Court, the Special Rapporteur welcomes the recent accessions to the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court. However, he is concerned about the continued opposition of some Governments to the Court, particularly when it takes the form of bilateral immunity agreements with States parties. The report highlights the Security Council's important decision to refer to the Court the grave human rights violations occurring in the Darfur region of the Sudan, which has signed the Rome Statute but is not yet a Party thereto, and calls for this valuable precedent to be applied to other situations of comparable seriousness and magnitude.

As regards the Iraqi Special Tribunal, the Special Rapporteur expresses his concern at the manner in which the trials already under way are being conducted. While acknowledging the commitment and personal efforts of the judges on the Tribunal and the cooperation provided by some countries when it was being set up, the Special Rapporteur has identified a number of shortcomings, some of which can be traced back to the manner and circumstances of the Tribunal's establishment. Of particular concern is the fact that the Tribunal's jurisdiction is restricted to specific people and a specific time frame; i.e., it can only try Iraqis for acts committed before 1 May 2003. In the Special Rapporteur's view, the Tribunal's power to impose capital punishment demonstrates the extent to which it contravenes international human rights standards.

At a time when the international community is discussing crucial reforms aimed at improving the effectiveness of the United Nations, such as the creation of a standing Human Rights Council, the report stresses the importance of ensuring that these reforms reflect the valuable experience acquired by the special procedures of the Commission on Human Rights. It also expresses the hope that the restructuring process currently under way will acknowledge the growing importance and cross-cutting nature of the issues addressed by this Special Rapporteur and that the measures necessary to the success of his work will be duly implemented.

The common denominator of the report's conclusions and recommendations is that they look to the United Nations to provide much of the answer to the main challenges currently existing in this area, given the inextricable and increasingly evident links between respect for human rights, peace and international security.

Contents

		Paragraphs	Page
I.	Introduction	1–2	5
II.	Terms of reference and methods of work	3–4	5
III.	Activities of the Special Rapporteur in 2005	5–10	6
	A. Activities to date	5–9	6
	B. Future activities	10	7
IV.	Mission to Ecuador	11–29	7
	A. Background	11–13	7
	B. Context	14–15	8
	C. Mechanism for appointing members of the Supreme Court	16–21	9
	D. Observation of the evaluation and appointment process	22–26	10
	E. Situation of the Constitutional Court and the Supreme Electoral Court	27–29	11
V.	Counter-terrorism and the right to a fair trial	30–34	12
VI.	The International Criminal Court	35–41	14
VII.	The Iraqi Special Tribunal	42–43	15
VIII.	Transitional justice and the right to the truth	44–46	16
IX.	Conclusions and recommendations	47–52	16

I. Introduction

1. This report is the first to be submitted to the General Assembly by the Special Rapporteur on the independence of judges and lawyers, in accordance with Commission on Human Rights resolution 2005/33 of 19 April 2005. In essence, it describes the Special Rapporteur's activities in 2005, one of the most important of which was his mission to Ecuador to follow up on the recommendations made during an earlier visit to the country. The report also addresses three very topical issues: the right to a fair trial in the context of the fight against terrorism, the activities of the International Criminal Court and the establishment of the Iraqi Special Tribunal. It also briefly raises other issues that the Special Rapporteur intends to address in his next report, such as, the right to the truth, access to justice and the challenges that transitional situations pose for the judiciary, particularly in societies emerging from conflict.

2. The issues addressed here, while important and complex, represent only part of the Special Rapporteur's mandate. As indicated in the report submitted to the Commission on Human Rights at its sixty-first session, in subsequent reports the Special Rapporteur intends to tackle issues relating to the separation of powers, problems regarding access to justice, gender equity, the role of justice in combating corruption in general and in the judicial system in particular, and the independence and external auditing of that system.

II. Terms of reference and methods of work

3. By its resolution 1994/41 of 4 March 1994, the Commission on Human Rights established the Special Rapporteur's terms of reference, which originally focused on the defence of judges, lawyers, prosecutors and court officials who had been victims of persecution or undue interference. This mandate was conceived as part of the Commission's work on the protection of all persons subjected to any form of detention or imprisonment. Over time, these terms of reference were extended to include the analysis of all the factors that could have an impact on the structure and functioning of the judicial system, impairing its independence, and of factors that hinder or prevent access to justice. More recently, the terms of reference were extended by various Commission resolutions to include other issues, such as the right to the truth in the context of combating impunity (resolution 2005/66) and transitional justice (resolution 2005/70).

4. The method of work used to draft this report follows the traditional model of the reports drawn up every year by the special rapporteurs. It includes an analysis of the situation of the judiciary in a number of specific countries, on the basis of allegations made and issues raised, as well as country visits; communications and urgent appeals to Governments; consultations with Governments, the relevant mechanisms and procedures of the United Nations and other intergovernmental organizations, non-governmental organizations (NGOs) and national institutions and organizations; participation in national, regional and international meetings and events; and the promotion of legislative initiatives and advocacy.

III. Activities of the Special Rapporteur in 2005

A. Activities to date

5. At the sixty-first session of the Commission on Human Rights, the Special Rapporteur submitted his report for 2004 (E/CN.4/2005/60) and a report on various country situations which were brought to his attention during the same period (E/CN.4/2005/60/Add.1). Since 1 January 2005, he has been asked to examine worrying situations in various countries; has sent, either alone or in conjunction with other special rapporteurs, 48 urgent appeals to the Governments of 27 countries and five letters of allegation to the Governments of five countries; and has issued 11 press releases concerning the situations in 12 countries. In addition, the Special Rapporteur submitted to the Commission reports on three missions: to Kazakhstan (E/CN.4/2005/60/Add.2), Brazil (E/CN.4/2005/60/Add.3) and Ecuador (E/CN.4/2005/60/Add.4). While the visits to Kazakhstan and Brazil took place in 2004, the mission to Ecuador, in response to a special invitation from the Government of that country, took place in 2005, on two occasions: the first from 13 to 17 March and the second from 11 to 15 July (see section III below).

6. From 20 to 24 June 2005, the Special Rapporteur participated in the twelfth annual meeting of mandate holders of the special procedures of the Commission, held in Geneva. As mentioned in the report of the meeting (E/CN.4/2006/4), in addition to discussing the adoption of measures to enhance the effectiveness of the special procedures system in terms of the functioning of each mandate and of the system as a whole, the participants decided to establish a five-member coordination committee. The role of this committee will be to support the experts and facilitate coordination between them throughout the year and to promote the standing of the special procedures system within the broader framework of the United Nations and its human rights programmes.

7. During this meeting, the Special Rapporteur, together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, held a press conference and issued a press statement on the situation of persons detained on grounds of terrorism at the Guantánamo Bay military base and other detention centres. This issue, which was addressed in the 2004 report, is also dealt with in section V below.

8. During this visit to Geneva, the Special Rapporteur also held consultations with officials of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in order to prepare for his follow-up mission to Ecuador, which would be conducted from 11 to 15 July, and his missions to Tajikistan and Kyrgyzstan, which will be conducted from 19 to 30 September at the invitation of the respective Governments. He also met with the representatives of various permanent missions accredited in Geneva, NGOs and United Nations bodies and programmes, as well as with representatives of the Bureau of the sixty-first session of the Commission on Human Rights and with the participants in the seventeenth meeting of chairpersons of the human rights treaty bodies.

9. On 19 May, the Special Rapporteur had a meeting in Geneva with the United Nations High Commissioner for Human Rights and the President of the

International Association of Judges in order to move forward in designing a cooperation project. On 20 May, the Special Rapporteur participated as a speaker and special guest in an event entitled "Justice, Strength of Democracy", held in Rome as part of the celebrations to mark the twentieth anniversary of European Magistrates for Democracy and Freedom (MEDEL). From 28 February to 2 March, the Special Rapporteur participated in an expert seminar convened by OHCHR in Geneva on democracy and the rule of law. On 3 March, he gave a presentation on issues relating to access to justice at a seminar on extreme poverty and human rights, held in São Paulo, Brazil, by the Nippon Foundation. In order to launch a practice of disseminating information about the Special Rapporteur's activities, on 30 June a presentation was given for academics and other law professionals at the Ministry of Foreign Affairs of Argentina; the participants included the President of the International Association of Judges, judges of the Supreme Court of Argentina, the deans of faculties of law and the presidents of the main associations of lawyers and judges in Argentina. Lastly, on 2 July, the Special Rapporteur gave a presentation on the protection of human rights and the role of justice during states of emergency at the Regional Seminar on Parliamentary Oversight of the Security Sector in Latin America, which was held in Montevideo by the Inter-Parliamentary Union and attended by political and academic figures from Latin America.

B. Future activities

10. In addition to the aforementioned missions to Tajikistan and Kyrgyzstan, the Special Rapporteur plans to participate in the fifth International Human Rights Colloquium, to be held in São Paulo, Brazil, from 8 to 15 October. The theme of the Colloquium, to which he was invited by Conectas Human Rights and Sur — Human Rights University Network, will be "South-South dialogue to strengthen human rights". In this context, on 10 October the Special Rapporteur will give a presentation on the activities relating to his terms of reference and an overview of the main attacks on the independence of judges and lawyers in the southern hemisphere. In addition, on 17 and 18 October, he plans to participate in a seminar on the right to the truth, organized by OHCHR in Geneva. Lastly, just before he submits this report to the General Assembly, the Special Rapporteur will conduct another follow-up mission to Ecuador in order to collect up-to-date information.

IV. Mission to Ecuador

A. Background

11. After his mission of 13 to 18 March 2005, concerning which a report (E/CN.4/2005/60/Add.4) was submitted to the Commission on Human Rights at its sixty-first session, the Special Rapporteur conducted a second mission to Ecuador from 11 to 15 July, at the invitation of the Government. The purpose of the visit was to follow up on his recommendations and, in particular, to help find the most appropriate means of resolving the crisis caused by the unconstitutional dismissal, on 25 November 2004, of the members of the Constitutional Court and the Supreme Electoral Court, followed by the dismissal of the members of the Supreme Court on 8 December.

12. During his stay, the Special Rapporteur met with the President of the Republic and other senior government officials; the President of the National Congress and deputies of various political affiliations; judges of the Supreme Electoral Court and members of the National Council of the Judiciary; former members of the Constitutional Court; the mayors of the cities of Quito and Guayaquil; the members of the Qualifications Committee responsible for restructuring the Supreme Court; representatives of associations of judges and judicial officials of NGOs; directors, journalists and opinion editors of various media outlets; and prominent Ecuadorian legal experts. He also held discussions with many diplomatic representatives accredited to Ecuador and with representatives of international bodies. The Special Rapporteur is grateful to the Government of Ecuador and to all the officials and representatives of civil society who cooperated extensively with him.

13. On 7 April 2005, prior to his visit, the Special Rapporteur held initial consultations at United Nations Headquarters with the Under-Secretary-General for Political Affairs and editorial and publishing staff, the United Nations Development Programme (UNDP) Regional Director for Latin America and the Caribbean and the UNDP Resident Representative in Ecuador, in order to exchange information on developments in the country and on future activities. On 16 and 17 June, the Special Rapporteur returned to New York to analyse, together with the same officials and an OHCHR representative, the feasibility and appropriateness of conducting a second mission to Ecuador and the possible participation of the United Nations as an observer in the Supreme Court selection and restructuring process. The Special Rapporteur is grateful to the local UNDP office for its assistance, and would like to highlight the excellent degree of cooperation between himself and the United Nations departments and programmes that made a significant contribution to his work in Ecuador, as well as the support lent by OHCHR.

B. Context

14. In his preliminary report, the Special Rapporteur warned that the situation in Ecuador could worsen if the normal working of the country's institutions was not restored. He also made urgent recommendations aimed at achieving an immediate return to the rule of law, suggesting possible avenues and criteria for establishing an independent Supreme Court.

15. Unfortunately, the recommendations were accepted only partially by the main institutional stakeholders in Ecuador. First, the National Congress and the Government failed to reach agreement on a mechanism to overturn the series of unconstitutional decisions adopted in late 2004. In this context, the new Supreme Court — labelled "de facto" by broad sectors of the population — adopted a decision of enormous political significance, by declaring that the proceedings against two former Presidents of the Republic, Abdalá Bucaram y Gustavo Noboa, and one former Vice-President, Alberto Dahik, were null and void. This decision aggravated the social and political tensions in the country, and the crisis spread to the main institutions. In response to growing popular demonstrations and protests, President Lucio Gutiérrez, through an executive decree of 15 April 2005, dismissed the Supreme Court which had been appointed illegally on 8 December 2004 and declared a state of emergency in the city of Quito. Both decisions were rejected by the majority of the country's citizens, with the result that the institutional crisis deepened even further. On 17 April, in line with the recommendations contained in

the Special Rapporteur's preliminary report, the National Congress reversed the resolution of 8 December 2004 by which it had illegally appointed the members of the Supreme Court. However, it did not order the reinstatement of the members of the Court who had been removed in late 2004. Ecuador was therefore left without a Supreme Court, and the decision by Congress was not sufficient to placate the citizenry. On 20 April, in an attempt to curb the wave of tension and violence, which was becoming particularly intense in the capital, the National Congress declared that President Lucio Gutiérrez had left office and that, in accordance with the constitution's provisions on presidential succession, Vice-President Alfredo Palacio would assume the presidency. On 26 April, the National Congress adopted a draft reform of the Law on the Organization of the Judiciary, in line with another of the Special Rapporteur's recommendations, in order to pave the way for the restructuring of the Supreme Court.

C. Mechanism for appointing members of the Supreme Court

16. In order to administer the process of evaluating and appointing the new judges and associate judges of the Supreme Court, the new Law on the Organization of the Judiciary provides for the establishment of a Qualifications Committee. The purpose of this ad hoc mechanism is to compensate for the fact that the constitutional clause on the principle of co-optation cannot be applied because the body authorized to do so, namely the Supreme Court, is non-existent.

17. The Qualifications Committee, which began its work in mid-June, is composed of four members: one appointed by the country's law faculties, one appointed by the country's superior courts and ordinary courts, one appointed by legally constituted human rights organizations and one appointed by civil-society organizations.

18. In line with the mandate established in the Law on the Organization of the Judiciary, the Committee adopted rules of procedure spelling out the application, evaluation, interview and appointment process whereby candidates are selected as Supreme Court judges and associate judges. These rules, along with a call for applications, were published on 11 July 2005 in the two newspapers with the largest national readership, thereby initiating the process.

19. During his visit, the Special Rapporteur observed that, probably as a result of the difficult social and political circumstances in which they were adopted, both the Law on the Organization of the Judiciary and the Committee's rules of procedure contain a number of provisions whose application would contravene a number of constitutional principles and international standards that protect the professional practice of lawyers. In particular, the Special Rapporteur highlighted several of the ineligibility criteria established for the post of judge, such as those contained in paragraphs 10 and 11 of the second article of the Law on the Organization of the Judiciary, which are reproduced in article 3 of the Committee's rules. These ineligibility criteria, which relate to the defence of certain cases, undermine the free exercise of the legal profession, the right to defence and principles such as non-discrimination and non-identification of lawyers with their clients. During the round of interviews, this perception was confirmed by the views of several renowned national legal experts.

20. During their meeting with the Special Rapporteur, the Committee members indicated their willingness to address and rectify deficiencies in the Law on the

Organization of the Judiciary and in the rules of procedure that might breach Ecuador's fundamental laws or international human rights treaties. In accordance with articles 18, 163, 272 and 273 of the Political Constitution of Ecuador, the provisions of the Constitution and of international treaty law take precedence over any domestic laws or rules which are incompatible with those provisions. The Special Rapporteur noted that he would take the Constitution and the international human rights treaties ratified by Ecuador as the legal frame of reference for his observations. Since there was no competent body to rule on the unconstitutionality of some of the legal and regulatory provisions to be applied in the selection of judges, it was important that the Committee should insert an interpretation clause explicitly recognizing the supremacy of the Constitution and of international treaties.[1] In the same context, the Special Rapporteur emphasized the need to respect the principles of gender equity and equal opportunity for men and women, especially in view of article 102 of the Constitution, which expressly refers to the participation of women in the administration of justice. Before the end of the visit, the Chairman of the Committee, Mr. Carlos Estarellas, informed the Special Rapporteur that the Committee had decided that both the Law on the Organization of the Judiciary and the Committee's rules of procedure would be applied in accordance with the Constitution and the international treaties ratified by Ecuador.

21. The Special Rapporteur believes that the aforementioned principles must be respected if the selection process is to provide sufficient guarantees of transparency and equity to encourage broad participation by the legal community. In his view, there are a number of respected, prominent jurists in Ecuador who would make excellent Supreme Court judges.

D. Observation of the evaluation and appointment process

22. Although the process of evaluating and selecting future members of the Court is the exclusive responsibility of Ecuadorians, the Law on the Organization of the Judiciary invites the United Nations, the European Union and the Andean Community to observe the process. In view of that provision and in accordance with the wishes of the majority of the stakeholders consulted, the Special Rapporteur asked the United Nations to undertake that activity on an ongoing basis until the process is completed. He also called for the participation of internationally recognized organizations whose activities are directly related to judicial matters, such as the International Association of Judges. The Special Rapporteur welcomes the decision of the Spanish Agency for International Cooperation to join a team of observers coordinated by the United Nations. The Special Rapporteur has also been informed that the Organization of American States will be present during the observation process and that the Andean Community has appointed an observer. The Special Rapporteur believes that the coordinated efforts of international and national observers will result in a more transparent and rigorous evaluation and appointment process. The terms of reference for the United Nations observers have been submitted to the Government and to the Qualifications Committee and have been presented to the public.

[1] This situation came about because all the members of the Constitutional Court were dismissed and it is legally impossible to set up a new Court until the Supreme Court, which is responsible for submitting a shortlist of candidates, is appointed.

23. The objective of the United Nations observers is to support the conduct of a transparent selection process that is free of undue influences and complies with national and international standards and principles regarding the independence of judges and lawyers. In accordance with the terms of reference, at all stages of the process the observers must remain impartial, refrain from interfering in matters for which national authorities have exclusive responsibility and focus on providing support of an eminently technical nature. They should not become or be viewed as key players in the process.

24. The responsibilities of the United Nations international observers shall be:

(a) To observe the evaluation and selection of Supreme Court judges and associate judges in order to confirm that the process is impartial, transparent and credible;

(b) To ensure that the Law on the Organization of the Judiciary and the Committee's rules of procedure are applied throughout the entire process in accordance with the Constitution and international treaties;

(c) To identify any non-compliance with national and international standards on the independence of judges and lawyers and to inform the Committee thereof;

(d) To identify any external interference in the evaluation and selection process and to inform the Committee thereof;

(e) To coordinate its activities with those of other national and international observers;

(f) To report to the United Nations on the conduct of each stage of the process, so that the Organization may communicate the findings to the Committee and to the Ecuadorian authorities.

25. In performing their duties, the United Nations international observers may:

(a) Hold regular meetings with the Qualifications Committee, national and international observers, participating auditing firms and such other actors as they may deem appropriate in order to exchange relevant information;

(b) Provide information and make suggestions at the request of the Qualifications Committee and authorized observers;

(c) Gather information on the evaluation and selection process from the Committee and from public and private entities.

26. The observers will continue their activities throughout the entire evaluation and selection process, including the swearing-in of the judges.

E. Situation of the Constitutional Court and the Supreme Electoral Court

27. With respect to the Constitutional Court, the Special Rapporteur observes that the National Congress has adopted a decision similar to the one taken regarding the Supreme Court, which was illegally dismissed in late 2004: it reversed the decision of 25 November 2004 whereby it had appointed a new Constitutional Court, but did not order the reinstatement of the members who had been removed under that decision. The Special Rapporteur is concerned to note that, in the absence of a

Supreme Court, which is responsible for proposing a shortlist of candidates, it is impossible to appoint the members of the Constitutional Court. As a result, the country is bereft of its highest authority for ruling on matters relating to human rights and constitutional guarantees, raising constitutional challenges and issuing legal opinions in relation to the adoption of international agreements. Given the importance of the Constitutional Court, the Special Rapporteur hopes that the country will rectify the lack of this institution in a manner that adheres strictly to the parameters and requirements established in the Constitution and the Law on the Organization of the Judiciary, in a context of complete transparency.

28. The Special Rapporteur observes that the Supreme Electoral Court is the only high court to which new members have been appointed since the crisis in April of this year. After interviewing members of the Court, he confirmed that, as stated in the preliminary report on his first visit, the Court is seen more as a political body than as a court dispensing justice in electoral matters. This may be due to the wording of the Constitution or to the way the parties interpret it. The Court members themselves said that they shared this perception and that an institutional reform was needed in order to separate the specifically political activities related to elections from the jurisdictional activities which the Court carries out in its capacity as an essentially technical and legal authority. The Special Rapporteur is of the opinion that such a reform would constitute an important institutional advance.

29. As mentioned earlier, the Special Rapporteur intends to visit Ecuador again so that he may provide the General Assembly with current information regarding the follow-up of his recommendations.

V. Counter-terrorism and the right to a fair trial

30. The Special Rapporteur examined this topic in his report to the Commission on Human Rights at its sixty-first session, focusing in particular on the human rights situation of persons accused of terrorism and detained by the United States of America at Guantánamo Bay and by coalition forces in Iraq and Afghanistan. In paragraphs 34 and 35 of that report, he questioned the legal validity of the sui generis category of "enemy combatant", concluding that the current international legal order does not provide for any possibility of excluding any person from the application of the standards of international human rights law and international humanitarian law, regardless of the legal classification used: "enemy combatant", insurgent, terrorist, etc.

31. The world situation has deteriorated considerably since that report was presented to the Commission. The bloody attacks in London and Sharm el-Sheikh clearly demonstrate that terrorists continue to commit acts which should be unanimously condemned and whose eradication requires concerted action by the international community. At the same time, many States are debating the adoption of national measures that could undermine adherence to international human rights standards. The United Kingdom, for example, is currently debating the adoption of domestic measures against suspected terrorists. In another disturbing development, Guantánamo Bay detainees are once again being tried by military commissions, which do not meet international standards concerning to right to a fair trial, in that they do not allow appeals to be brought before a civil judge, deny the right to defence, and discriminate between nationals and non-nationals, among other

problems. As regards the transfer of Guantánamo Bay detainees to their countries of origin, the Special Rapporteur urges the States concerned to respect the rights which have thus far been denied them.

32. It should be recalled that the Commission on Human Rights has been actively engaged in this field for several years. At their tenth annual meeting, held in June 2003, the special rapporteurs, representatives, independent experts and chairpersons of working groups of the special procedures of the Commission expressed profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affected negatively the enjoyment of virtually all human rights. The participants expressed their determination, in the framework of their respective mandates, to monitor and investigate developments in that area (see E/CN.4/2004/4).

33. At their eleventh annual meeting, held in June 2004, the special procedures mandate holders reiterated their determination to continue monitoring the situation and unanimously proposed that the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on the independence of judges and lawyers, the right to health and the question of torture, jointly visit persons who had been arrested, detained or tried on grounds of terrorism or other violations, in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere (see E/CN.4/2005/5, annex I). The purpose of the visits was to enable the mandate holders to ascertain whether international human rights standards were properly upheld with regard to those persons and to make themselves available to the authorities concerned for consultations and advice on all issues within their areas of competence. In January 2002, the experts began submitting individual and joint requests to the Government of the United States to visit the Guantánamo Bay military base. These requests were later extended to include Iraq, Afghanistan and other detention centres where persons accused of terrorism were being held. On 4 April 2005, the experts met with officials of the Permanent Mission of the United States in Geneva to discuss the terms of such a visit. However, the Government of the United States indicated that the circumstances were not favourable at that time. At the twelfth annual meeting of special procedures mandate holders, the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to health and the Special Rapporteur on the questions of torture, with the support of the other participants, expressed their concern regarding the United States' refusal to provide an answer to the requests and announced their decision to conduct an investigation of the matter, regardless of whether or not they were allowed to visit the detention centres.

34. The Special Rapporteur welcomes the decision taken by the Commission on Human Rights at its sixty-first session to appoint, in accordance with resolution 2005/80, a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Rapporteur's mandate includes gathering information on alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by other mandate holders; making recommendations and providing advisory services or technical assistance, at the request of States; identifying and promoting best practices on measures to counter terrorism that respect human rights and fundamental freedoms; establishing areas of cooperation with Governments, relevant United Nations specialized agencies and programmes, non-governmental

organizations and regional and subregional institutions; working in close coordination with other special procedures mandate holders of the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights and other relevant United Nations bodies; and reporting regularly to the Commission and to the General Assembly. The Special Rapporteur welcomes the recent appointment of Mr. Martin Scheinin to this new mandate and trusts that it will result in a more effective and comprehensive approach to the issue of counter-terrorism and that close cooperation will be established between the holder of the new mandate and the other special rapporteurs who deal with this issue within their respective areas of competence, so as to avoid gaps or overlaps.

VI. The International Criminal Court

35. In a very auspicious development, two additional States have acceded to the Rome Statute of the International Criminal Court since the Special Rapporteur's last report to the Commission: Kenya and the Dominican Republic on 15 March and 12 May 2005, respectively. It is also significant that the Agreement on the Privileges and Immunities of the International Criminal Court was ratified by the Governments of Croatia, Latvia, Lithuania and Sweden between December 2004 and January 2005. However, the Special Rapporteur is concerned about the continued opposition of some Governments to the Court's effective functioning, particularly when it takes the form of bilateral immunity agreements with States parties.

36. The existence of the International Criminal Court and the fact that the Security Council, acting under Chapter VII of the Charter of the United Nations, may refer to the Court serious human rights violations in States not parties to the Rome Statute constitute significant advances towards ending impunity.

37. The Special Rapporteur would particularly like to recognize the important precedent set in Security Council resolution 1593 (2005) of 31 March 2005, whereby the Security Council referred the situation in the Darfur region of the Sudan to the International Criminal Court, thereby exercising, for the first time, the right to refer war crimes and massive human rights violations to the Court, as provided in article 13 (b) of the Rome Statute of the International Criminal Court, which concerns the referral of situations in which any of the crimes referred to in the Statute appears to have been committed. By its resolution 1593 (2005), which was adopted with 11 votes in favour and 4 abstentions, the Security Council decided to refer reports of grave human rights violations and war crimes committed in Darfur since 1 July 2002 to the International Criminal Court, thereby complementing its resolution 1590 (2005) of 24 March 2005, whereby it established the United Nations Mission in Sudan, and its resolution 1591 (2005) of 29 March 2005, whereby it tightened the arms embargo against the Sudan and imposed other sanctions. This not only constitutes a decisive step towards ensuring that the crimes committed in Darfur — the extent of which demonstrates once again the inextricable link between peace, security and the administration of justice — do not go unpunished; it also sends an important message in relation to other situations of comparable gravity and magnitude.

38. The above-mentioned resolution is the result of positive interaction among different United Nations bodies and procedures and is based on the report of the International Commission of Inquiry on violations of international humanitarian law

and human rights law in Darfur, which the Secretary-General was requested to establish by Security Council resolution 1564 (2004) of 18 September 2004.

39. It may be recalled that the members of the International Commission of Inquiry were appointed in October 2004 by the Secretary-General and asked to report on their findings within three months. The Commission's mandate focused on four objectives: to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties; to determine whether or not acts of genocide had occurred; to identify the perpetrators of such violations; and to suggest means of ensuring that those responsible were held accountable. The report of the International Commission of Inquiry on Darfur (S/2005/60) contains an extensive list of grave violations of international humanitarian law that constitute war crimes, as well as violations of international human rights law. These include the most reprehensible attacks against civilians, such as murder, torture, forced displacement of persons, various forms of sexual violence, enforced disappearance, detention, looting and destruction of villages and property. Given the systematic and widespread pattern of these attacks, they amount to crimes against humanity.

40. To ensure accountability for the crimes committed in Darfur and taking into account the deficiencies of the Sudanese judicial system, the International Commission of Inquiry for Darfur recommended that the Security Council should refer the situation to the International Criminal Court. Encouragingly, as a result of the adoption of Security Council resolution 1593 (2005), on 1 June the Prosecutor of the International Criminal Court decided to open an investigation into the situation in Darfur.

41. This case is significant not only because it is topical and innovative, but also because it highlights the fact that the deficiencies of national legal systems can be overcome if the international community decides to take action for the purpose of dispensing justice.

VII. The Iraqi Special Tribunal

42. At the time of writing (August 2005), the Special Rapporteur is concerned about the judicial proceedings taking place before the Iraqi Special Tribunal. Despite the commitment and personal efforts of the judges and the cooperation provided by several countries in setting up the Tribunal, he is concerned that the pressure weighing on the judges and the prevailing insecurity in Iraq may undermine its independence. Moreover, the Tribunal itself has certain deficiencies, some of which can be traced back to the manner in which it was set up and, in particular, to the restriction of its jurisdiction to specific people and a specific time frame; i.e., the Tribunal may only try Iraqi citizens for acts committed prior to 1 May 2003, when the occupation began. The Tribunal's power to impose the death penalty demonstrates the extent to which it contravenes international human rights standards. Because it was established during an occupation and was financed primarily by the United States, its legitimacy has been widely questioned, with the result that its credibility has been tarnished.

43. The Special Rapporteur urges the Iraqi authorities to follow the example set by other countries with deficient judicial systems by asking the United Nations to set up an independent tribunal which complies with international human rights standards.

VIII. Transitional justice and the right to the truth

44. In his next report to the Commission on Human Rights, the Special Rapporteur will analyse the challenges faced by judicial authorities in administering justice in transitional situations and in applying the law in societies emerging from conflict. In that connection, he will elaborate on the context of the international standards that should guide the actions of the judicial system, so as to ensure due process in situations characterized by fragile institutions and political and social instability.

45. In accordance with Commission on Human Rights resolution 2005/66, the Special Rapporteur intends to analyse in depth the link between the right of access to justice and the right to the truth. Recent decisions such as the one taken by the Supreme Court of Argentina on 14 June 2005 declaring the unconstitutionality of the "full stop" and "due obedience" laws, which had severely restricted the prosecution of crimes, have reaffirmed that victims of serious human rights violations and their relatives are entitled to expect that their national legal systems will prosecute such violations, identify the perpetrators and clarify the circumstances. The Special Rapporteur believes that there is an indissoluble link between the right to the truth and the fight against impunity, and intends to examine the question further, to complement the study which the United Nations High Commissioner for Human Rights will conduct, in accordance with Commission on Human Rights resolution 2005/66.

46. To that end, the Special Rapporteur will participate in a seminar on the right to the truth organized by OHCHR in Geneva.

IX. Conclusions and recommendations

47. **The Special Rapporteur's mandate and methods of work were outlined at the beginning of this report because it is the first which he is submitting to the General Assembly. The aim was to provide an overall picture of the Special Rapporteur's objectives and duties and of the different sources and mechanisms used in his work.**

48. **With respect to the situation of the judiciary in Ecuador, the Special Rapporteur's visits revealed the chronic weakness of the country's institutions and the serious obstacles to rectifying it. The Special Rapporteur also found that actions that undermine justice have repercussions that spread beyond the judicial branch and extend to the institutional framework as a whole, potentially leading to political consequences, such as those observed in Ecuador in April 2005, which culminated in the removal of the President of the Republic, Lucio Gutiérrez. The work currently being carried out by the Qualifications Committee to select the members of the future Supreme Court represents the first step towards reorganizing of justice system; this task also calls for immediate and substantial reforms. The unprecedented participation of the United Nations in observing the Committee's activities is a true innovation in the Organization's work in this field. It also demonstrates that the highest authorities in Ecuador share a genuine desire for transparency.**

49. **Despite the clear international consensus that counter-terrorism must be conducted in accordance with the rule of law, the Special Rapporteur observes that, in practice, both the rule of law and international law have been**

repeatedly violated to the detriment of many human rights, particularly the right to personal integrity and the right to a fair trial by a legally established, independent and impartial tribunal. In many States, counter-terrorism measures have undermined other rights, such as freedom of opinion, expression, assembly and association and the right to strike, and have negatively affected specific groups, such as migrant workers, refugees and asylum-seekers. What is more, the measures currently being debated in some European countries can only aggravate this trend. Coming from a region whose population was victimized by the illegal actions taken by States to suppress violence, the Special Rapporteur reiterates his conviction that nothing can combat irrational acts and extreme forms of violence more effectively than the wisdom embodied in the rule of law. The appointment of a Special Rapporteur specifically mandated to monitor compliance with international human rights law in counter-terrorism actions is an important step forward in this regard. The Special Rapporteur is prepared to cooperate fully with this new mandate holder, and proposes that the latter take into account the work carried out in this area by the different mandate holders of the special procedures within their respective areas of competence. In this context, attention should be drawn to the reports on terrorism and human rights submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Ms. Kalliopi Koufa, the publication of which as a single document has been recommended by the Commission.

50. With regard to the International Criminal Court, the Special Rapporteur welcomes in particular the important precedent set by the decision of the Security Council, acting under Chapter VII of the Charter of the United Nations, to exercise for the first time its power under article 13 (b) of the Rome Statute to refer to the Court the serious human rights violations which have taken place in the Sudan, a signatory but not a party to the Rome Statute. This constitutes decisive progress towards ending impunity and also a valuable lesson, as it shows that action by the international community can adequately compensate for deficiencies in national legal systems. By extending the Court's jurisdiction to States not parties to the Rome Statute, the Security Council has demonstrated the value it attaches to justice in its primary role of maintaining international peace and security.

51. The Special Rapporteur points out that the Iraqi Special Tribunal has certain deficiencies and that its legitimacy has been rightfully criticized, with the result that its credibility has been called into question. He is alarmed that it is empowered to impose the death penalty, that its jurisdiction is restricted to specific persons and a specific time frame, and that it otherwise violates international human rights standards. He hopes that the Iraqi authorities will adopt relevant measures to ensure that the barbaric crimes committed in Iraq will be prosecuted by independent and impartial tribunals, in strict compliance with international human rights standards, as other countries in similar circumstances, such as Sierra Leone, have done with the active cooperation of the international community. As mentioned earlier, mankind has admirably demonstrated that it is possible to overcome legal or material constraints at the national level, combat impunity and dispense justice, on the basis of different international precedents.

52. **At a time when the United Nations is implementing crucial innovations, such as the establishment of a standing Human Rights Council, the Special Rapporteur believes that the new Council should take into account the experience acquired by the special procedures of the Commission on Human Rights and should make those procedures a fundamental part of its future efforts to improve the protection and promotion of human rights. At the same time, he would like to emphasize the central role which justice has come to play in United Nations activities over the past few years, as an instrument for the protection of human rights and a tool for enabling the Security Council to carry out its primary function of maintaining international peace and security, in accordance with Chapter VII of the Charter. In that spirit, the Special Rapporteur hopes that the restructuring of the United Nations will acknowledge the fundamental and cross-cutting nature of the issues addressed by this Special Rapporteur and establish the necessary mechanisms to strengthen his work.**

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Building institutions for achieving the development goals and integrating in the global economy

Report of the Secretary-General

Summary

The General Assembly, in resolution 59/240 of 22 December 2004, recognized the importance of national policies, an enabling international environment and policy coherence for the beneficial integration of countries, particularly developing countries, into a globalizing world economy, and underscored the centrality of institutions as well as institutional coherence in this quest. The present report addresses the institutional dimension of the challenges of integrating into the world economy. The achievement of this integration depends on the attainment of maximum economic growth while at the same time promoting social goals and environmental protection, all complex interrelated issues that require strong institutional mediation.

The need for institutional development and adaptation is an enduring challenge. A narrow view of institutional reforms — especially that focuses only on the role of markets and securing private property rights without due attention to a holistic and optimal development outcome from the point of view of society — may be inadequate. Whereas the role of markets is critical, it needs to be seen within the context of broader societal goals of social equity and environmental sustainability.

The principal challenge facing developing countries is to develop sound institutional foundations for the effective and efficient functioning of markets within the framework of their social and environmental objectives. The right supportive institutional arrangements may vary given the level of development and specific national and regional contexts. This notwithstanding, empirical evidence shows that institution building and strengthening are a vital pursuit in the quest of developing countries for sustainable development and beneficial integration in the global economy.

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A central objective should be to ensure that institutional reforms respond to the needs of the poor as a key priority in poverty-reduction strategies and, indeed, in overall strategies to promote more rapid, broad-based and sustainable growth and development.

Contents

		Paragraphs	Page
I.	Background	1–3	3
II.	Introduction	4–5	3
III.	Defining institutions	6–11	4
IV.	Key features of effective institutional change	12–21	6
V.	Challenges	22–26	7
VI.	Managing integration and achieving sustainable development through institution-building	27–56	9
	A. Achieving sustained economic growth	27–38	9
	B. Meeting basic needs and promoting equity	39–47	13
	C. Promoting environmental sustainability	48–56	15
VII.	Conclusions and recommendations	57–62	17

I. Background

1. Integration in the global economy entails a variety of strategic and policy measures and actions. One of the key instruments for deepening integration has been the adoption of different models of market-oriented reforms and openness suitable to each country. The primary expectation arising from this integration is that development will be achieved. Yet, this expectation has not been fulfilled for many developing countries, giving rise to questions about the right circumstances in which beneficial integration takes place.

2. Experience shows that the realization of these goals requires strong institutional underpinning to guide and buttress economic activities and mediate sometimes conflicting interests in the development process. For example, markets cannot function without institutions that support transactions among agents, including the enforcement of contracts. Institutions also help to manage and mediate the competing demands of economic growth, social development and environment protection. At another level, institutions are required to respond to changes in the global economy and the emergence of rule-based international regimes in the area of the environment, finance and trade that impose new obligations on national Governments. In other words, the pursuit of economic growth and development goals in a changing and dynamic global economic environment requires constant institutional adaptation and change to respond to new circumstances. Lastly, for developing countries, economic reforms and restructuring have not always proceeded smoothly. Moreover, the size of their markets and the imperfect flow of information often mean that markets do not operate optimally. All these factors imply a larger role for Governments in bridging gaps that would otherwise stifle the smooth functioning of private social and economic agents. This notwithstanding, the institutional dimension has often been taken for granted in the development strategies of many developing countries, hence the need to revisit the subject in the hope of rekindling activism in the area in the coming years.

3. The General Assembly, in resolution 59/240 of 22 December 2004, recognized the importance of national policies, an enabling international environment and policy coherence for the beneficial integration of countries, particularly developing countries, into a globalizing world economy, and underscored the centrality of institutions as well as institutional coherence in this quest. The present report is intended to address the institutional dimension of the challenges of integrating into the world economy. The achievement of this integration depends on the attainment of maximum economic growth and development while at the same time promoting social goals and environmental protection, all complex interrelated issues that require strong institutional mediation.

II. Introduction

4. The process of globalization and interdependence, engendered by market reforms and openness, has made integration into the world economy imperative. This is particularly true for developing countries, which tend to have large external exposure. Integration in the global economy has also come to be associated with expectation of achieving higher rates of economic growth, through trade expansion and access to foreign direct investments (FDIs) and technology, which are essential for the achievement of the goals of poverty eradication and sustainable

development. In many cases, particularly in Africa and Latin America, the results of efforts at integration, including years of experimentation with economic and political reforms, have fallen short of expectations. There are many factors that have contributed to this outcome, and the lack of appropriate and effective institutions around which economic activity and development can thrive is certainly an important one.

5. Success in establishing institutions that put developing countries on the path to economic growth alone is not sufficient for poverty eradication and sustainable development. Equally necessary are institutions that mediate the goals of social equity and environmental sustainability. There is, however, an emerging consensus that good-quality institutions are important for ensuring the transition to higher productivity, faster growth and sustainable development. In this sense, there is considerable evidence that institutional differences among countries are among the fundamental factors explaining differences in incomes and standards of living across countries.

III. Defining institutions

6. Institutions can be conceived as the organizations rules and social norms, formal or informal, that facilitate human interaction, including those that structure political, economic and social interactions. In the area of economic activities, they include norms, procedures and regulatory frameworks that guide transactions in such areas as finance, trade, investment and technology, and mediate information about markets, their participants and the available goods and services whether at national, regional or global levels. The necessity of translating these rules into policies and the need to implement and enforce them give rise to entities (such as central banks, regulatory agencies), structures (such as pension systems) and arrangements (such as exchange-rate regimes) which can be formal or informal, and public or private.

7. A useful distinction can be made between formal and informal institutions. The former are rules or entities that are determined by public policy or codified. They include constitutions, laws and regulations as well as entities that oversee these rules, ranging from legislatures to the central banks. The latter are widely accepted conventions, codes of conduct or social norms often embedded in the very fabric of society and largely respected voluntarily. Informal institutions are important in that they create certainty and predictability in social and economic transactions where formal rules do not exist. They also create and promote values that would be more difficult to agree upon in more formal settings. In this way, they complement formal institutions and provide the bedrock on which they are built and nurtured.

8. Institutions are also shaped by informal networks. These voluntary networks that either promote existing norms and values or seek to create and advocate different causes and values are assuming increasing importance. The United Nations Global Compact is an example of a non-negotiated institutional innovation that evolved to promote responsible corporate behaviour that asks companies in their practices to embrace 10 principles in the areas of human rights, labour, the environment and anti-corruption. The Compact is an example of how informal

networks can coalesce around existing core values and norms, and effect their practical translation where more formal enforcement would have been very difficult.

9. The form of institutions is important and their quality matters as well. The quality of institutions is usually determined on the basis of factors such as good governance, including the degree of corruption, public sector efficiency and the suitability of regulations; the extent of legal protection and enforcement of property rights, private and public and, in many societies, collective property rights; and the checks and balances imposed on elites, political leaders and other powerful interest groups. These minimum standards of good institutions are deemed necessary to lower the burden of transactions costs on innovation and enterprise, to restrain infringement on the rights and properties of others, and to avoid distortion of incentive structures in society.

10. Throughout history countries have changed their institutions not only to cope with their own development but also to respond to the evolution of regional and global norms and rules (see box 1). This necessity is more evident in the context of

Box 1
The United Nations development agenda and inclusive globalization

The outcomes and commitments of the major United Nations conferences and summits of the 1990s and beyond — the United Nations development agenda that encompasses a broad range of development issues and goals — have become the organizing framework for international cooperation for development. In fact, the Millennium Development Goals, the eight goals that include the commitment of the international community to reduce by half the number of people living in extreme poverty by 2015, have now been adopted by all development institutions as a reference point for their work. This achievement is an apt illustration of how institutions evolve and adapt to changing imperatives. Consensus is emerging that the design of poverty reduction strategies should be Millennium Development Goals-based, a move that will further institutionalize the United Nations development agenda. The internationally agreed development goals are the surest tool for balancing the economic, social and environmental objectives while at the same time promoting inclusive globalization — globalization with a human face.

rapid globalization and interdependence. Strategies to build and strengthen national institutional arrangements should therefore take this factor into account. The importance of the regional and the global dimensions depends on the issue at hand. In the area of trade, the rules agreed upon in the World Trade Organization are negotiated multilaterally, have almost universal application, and are binding. In the area of environment, a number of multilateral agreements have been concluded that also cover a whole range of issues of global concern. In some regions, the desire to expand markets has driven regionalism. Sometimes, a combination of geography, history, culture, interlocking national interests and the need for cooperation dictate regional institutional development. In designing new institutions and strengthening

existing ones, the spatial dimension is therefore important in respect of ensuring that spillover effects and the positive and negative externalities arising from national and local actions and multilateral legislation are considered and internalized.

11. This report uses all these definitional dimensions, and adheres to a general rule that institutional forms should to the extent possible follow from clear functional attributes. The primary responsibility for establishing sound national institutions rests with each country and its leadership. However, for each specific sector and country, there are an array of choices regarding the specific form institutions might take. In establishing and adapting institutions, countries need to take into account their circumstances, their history and their development objectives.

IV. Key features of effective institutional change

12. While each country needs to develop institutions to meet its specific needs for achieving the development goals and adapting to and managing integration in the global economy, there are certain key features that are essential for building effective institutions. Drawing up an exhaustive list of these features is neither possible nor necessary; instead, some illustrative examples are given in the present section.

13. *Promoting inclusiveness.* Good institutions promote social, political and economic inclusiveness. This is the basis upon which they become generally acceptable to the whole society. This test can be met only when there is wide participation in decisions about institutional development to ensure that the interests of various constituencies are met in a balanced manner. The ability of a country to allow, generate, coordinate and balance diverse opinions and interests is testimony to successful institutional development. Institutions that coordinate and mediate conflicting interests are important for creating an atmosphere that is conducive to stability and broad-based economic growth and development. This also has direct impact on the distribution of benefits. The test of inclusiveness is also applicable at the global level. In the context of achieving the development goals and integrating into the world economy, institutions must evolve and respond to the concerns and interests of all countries.

14. *Enhancing accountability and transparency.* Accountability and transparency are the guarantors of institutional objectivity and impartiality. This also checks the tendency of entrenched interests to resist institutional changes that respond to emerging challenges or promote equity and sustainable development if those changes threaten their position. One effective tool for enhancing accountability and transparency is performance reporting, as it can help various actors understand the impact of various options for action. Another comprises effective checks and balances existing within institutional structures and in the environment in which they function.

15. *Innovation and learning.* Good institutions should facilitate smooth adjustment to changing circumstances in a country and in the external environment. Without inbuilt ability to learn and adapt, institutions can become irrelevant in changing situations and thus produce unacceptable outcomes. Institutional change is a painstaking and costly process. Despite the costs and uncertainty involved, however, changes in the economic and social environment require countries to adapt their institutions if they wish to minimize adverse outcomes and generate maximum

benefits for their people. This dynamism and agility are also required at the global level.

16. *Complementarity*. The institutions should complement each other. The effective functioning of one institution usually requires the proper functioning of others. For example, proper functioning of a formal institution like a constitution depends crucially on informal institution like social norms. Without functional and structural complementarities between the institutions dealing with economic, social and environmental areas, the goals of poverty eradication and sustainable development are difficult to achieve.

17. Institutional innovation should, to the extent possible, build on existing institutions to ensure that changes are understood and stand a better chance of being accepted by the widest possible number of strata of society.

18. Institutions are as good as the people who design, build and operate them. Therefore, it is essential that their design, while giving due attention to institution building and change, take into account the human capacity for implementation. Each institution has unique characteristics that determine its viability and effectiveness. Institutional capacity includes, but is not limited to, the knowledge, skills and, above all, the commitment of all the stakeholders — particularly, the individuals responsible for managing the institutions' affairs as well as all its beneficiaries.

19. Human capital affects the quality of the rules that govern market transactions and the enforcement of these rules. Literacy levels and technical skills vary greatly across and within countries, influencing the ease of use of formal institutions by the public. The rules and organizations that govern markets have to allow the relevant market actors to use them easily. This argument holds within countries as well, for example, across poorer rural and richer urban areas.

20. The usefulness of institutions also depends on the capability of their administrators. Judges untrained in corporate law and accountancy, for instance, may not be the best arbiters in bankruptcy cases. Successful institution-builders have had either to tailor institutions to prevailing administrative capacity (using, for example, simpler bankruptcy rules) or to supplement institution-building with a strong focus on concurrently developing technical expertise for administrators (encompassing skills in areas ranging from accountancy to regulatory economics).

21. In turn, the effectiveness of institutions also depends on the system of checks and balances that should promote their accountability to the public.

V. Challenges

22. There are major challenges that all countries, particularly developing countries, face in their quest for building and strengthening institutions. The institutional forms, whether public or private, formal or informal, cannot simply be packaged and distributed as a one-size-fits-all solution for all countries. For instance, the need for a good property rights and regulatory regime to make markets work well and the requirement of good governance as the foundation for economic and social development, while generally acknowledged, neither work nor apply in the same way for all countries. Institutions therefore need to be designed to respond to the specific needs of a country and should be adjusted and upgraded as and when necessary. Developing countries need to be provided with the space and autonomy

required to experiment and come up with institutional innovations that are most appropriate to their needs. Ideally, the role of global interaction in this area ought to be to promote the interface between national institutional systems, not to harmonize institutional differences away.

23. Second, the world economy and the socio-political environment in which countries operate are constantly changing. Moreover, countries also go through various stages of development that require different types of institutions. For example, the emphasis on environmental sustainability and free markets is fairly recent and continues to generate demand for new institutional responses at the national, regional and global levels. Coping with these changes in different sectoral areas is a challenge because often the actions required are not fully understood, involve uncertainty and risks, are costly and create winners and losers.

24. Third, there are global regimes and norms that impose additional obligations on all countries. These pose special challenges to developing countries, which sometimes find their development efforts constrained by the common rules and standards of the overall global context, for example, in the areas of trade, finance, the environment and technology. These in turn strongly influence domestic institutional design and other policy responses. As a result, countries should constantly seek institutional solutions with respect to dealing with myriad emerging development challenges that most often transcend their national jurisdictions and overall capacity.

25. The process of globalization in the world economy involves, on the one hand, competing demands arising from the pursuit for example, of the goals of efficiency, equity and sustainability and, on the other hand, competition among unequal partners. It is therefore necessary to ensure, for instance, that institutions governing finance and trade not only focus on fair outcomes but also promote inclusive economic growth and sustainable development. These are challenging institutional questions that require the political will to act for a common good.

26. Finally, a crucial consideration relates to the sustainability of institutional reforms. Nothing is more detrimental to the popular enthusiasm for change than a burst of action followed by a long period of uncertainty and, eventually, few or no results. Processes of change imposed from the top, and viewed from below with deep suspicion and/or as a potential source of tension and risk, suffer this fate. It is therefore crucial to involve all stakeholders in the process as it moves from conceptualization and risk analysis to design and implementation of the key components of institutional change. The importance of systematic multi-stakeholder involvement in institution-building at all levels, therefore cannot, be overemphasized. Multi-stakeholder involvement can help to ensure system accountability and sustainability. Accountability of the national and local political systems serves as the only guaranty that the requisite institutions will get built and be sustained. The institutionalization of multi-stakeholder consultation should be promoted to ensure systematic participation and the viability and durability of institutional change. The inclusion of vulnerable groups is of particular importance because they have first hand knowledge of their needs. Ensuring that women participate in decision-making at all stages and levels on an equal footing with men is especially crucial.

VI. Managing integration and achieving sustainable development through institution-building

A. Achieving sustained economic growth

27. Developing countries' competitiveness in the global marketplace in the areas of finance, goods and services, capital and technology has become more critical to sustained economic growth. This has dictated certain changes, in particular involving institutions such as regulatory frameworks, and the role of government, the private sector and civil society. All countries have not been able to respond with equal success. It is now widely acknowledged that among the reasons why some countries are unable to reap the benefits of globalization is their lack of preparedness in terms of sound institutional capacities for sustained economic growth. The question becomes, in light of the lacklustre economic performance of several developing countries, What are the challenges that need to be met to promote economic growth? The first relates to building a strong institutional foundation for enterprises based on the rule of law, transparency and accountability, and balancing public and private interests. This requires, for instance, that market reforms and openness should respond to the needs of the whole society, thus also taking into account the goal of promoting outcomes that are socially optimal and environmentally sustainable. The second relates to ensuring that the wider global development context, in which all developing countries have to pursue their economic interests and development, is favourable. This also requires fair rules that facilitate the beneficial participation of developing countries in the global economy. The key to meeting these tests is in forging the institutional and development policy responses that are flexible enough to balance economic, social and environmental objectives and to promote cooperation among all countries in sharing the know-how needed to achieve the development goals.

28. In this regard, there is a need to continue to improve institutions in key economic areas such as macroeconomic stability, finance, trade, investment, technology, infrastructure and utilization of development assistance.

29. One of the conditions necessary for good economic performance and development is having sound macroeconomic policies in place. Sound macroeconomic policies relate to sustainable fiscal and external balances, moderate inflation, low and stable interest rates, stable exchange rates and increasingly stable asset prices. Distortions and volatility in these prices and balances can reduce growth rates and dampen investments. Ideally, policies aimed at macroeconomic stability should also emphasize economic stability and economic growth that generates employment. Sound and predictable macroeconomic policies are more feasible within the right institutional context, such as that of transparent decision-making. For instance, in the area of finance, mobilization of domestic resources, as well as their efficient utilization, can be promoted through an effective system of financial intermediation, and proper debt and equity markets, as well as a well-functioning insurance sector. This, in turn, can be facilitated by independent, transparent and accountable regulatory and supervisory frameworks suited to each country. These frameworks must be suitable for local conditions and must facilitate, rather than hinder, business transactions by not imposing unnecessary costs, increasing risks and erecting undesirable barriers to competition. Similarly,

liberalized financial markets need to be complemented by financial disclosure requirements and financial supervision.

30. The external economic environment also needs to support efforts to achieve sustained economic growth, particularly for smaller economies. Therefore, strong coordination of macroeconomic policies among the leading industrialized nations could help in stabilizing and promoting balanced growth and stability in the global economy, thereby supporting efforts to achieve high rates of economic growth that can translate into development gains.

31. Sound macroeconomic conditions need to be buttressed by good physical infrastructure, especially power, telecommunications and transport, as infrastructural weaknesses pose major impediments to investment, trade and competitiveness by increasing costs of production. Many important infrastructure facilities are natural monopolies, while others do not easily attract private capital, especially in economically weak countries. Where public finances are limited, public expenditure on infrastructure investment is often inadequate. Private-public partnerships could be promoted through arrangements whereby Governments and their development partners pave the way for infrastructure investments through pricing and concessions arrangements and other related activities. These are politically sensitive areas, as they relate to access to merit goods, that is to say, essential services such as water, energy and transport, whose provision through purely market arrangements may have unintended negative impacts on people living in poverty. Because of the limited size of many developing-country markets, regional and international cooperation in the promotion and funding of infrastructure development, and the exchange of related knowledge and research, hold great promise. For these arrangements to be credible to private investors, they must be built around practical and transparent rules and regulations. Although many developing countries are putting in place the necessary institutional frameworks, the complexity of the issues involved means that more work is required.

32. It is through the fulfilment of some of the conditions mentioned above, among others, that investments, including FDI, can be promoted and contribute to increased employment, productivity, and the transfer of technologies and knowledge as well as foster healthy competition, thereby nurturing entrepreneurship. The conditions that balance the rights and obligations of foreign investors and the host country, and functional institutions and services for promoting investments, are critical in this regard.

33. It is very difficult for a country to benefit from trading opportunities without having developed appropriate capacities to do so. Low-income developing countries, particularly least developed countries, also face numerous supply-side constraints. Until these constraints are overcome, least developed countries cannot benefit much from export opportunities. Countries need to build their productive and trade capacities, including those addressing agricultural and agro-industrial development. Governments can play a role in helping to identify and nurture new areas of activity in which a country has or can develop a comparative advantage. However, the capacity for international trade can become an instrument for achieving the internationally agreed development goals only if the global trading system is development-oriented. A universal, rule-based and equitable trading system that allows developing countries to take full advantage of international trade

is key to making trade an instrument of development. It also determines the success with which productive capacity can be built.

34. The ability to generate and utilize technology is an important ingredient for pursuing development goals. Most developing countries do not have or cannot afford the institutional arrangements required to absorb and generate technologies, such as institutions for research and development, and the incentive structures to overcome limited market size. Unfortunately, the lack of viable markets in the developing world offers no incentive for private companies to develop technologies suited to the needs of developing countries. They are also faced with restrictive regimes like that for trade-related aspects of intellectual property rights, which effectively limit access to technologies needed for beneficial integration into the global economy. These countries need to develop institutional frameworks that facilitate and nurture technological development. This should also be supported by global institutional responses. The question of access needs to be addressed by making existing regimes more development-friendly; and there are several ways to overcome the problem of generating relevant technologies. Innovative schemes to subsidize technological adaptation and generation merit consideration as do Governments' commitment to contractually reward the creation of such new technologies for developing countries with guaranteed purchase agreements.[1] In this way, they would ensure minimum financial returns on private research undertaken for the benefit of developing countries. These are the kinds of institutional and policy innovations required to fully utilize the potential of market forces for achieving the development goals.

35. Migration is another issue that needs greater attention. The increase in cross-border movements of labour is a hallmark of globalization that has both benefits and costs. In the absence of a more orderly framework for migration beyond the International Labour Organization (ILO) conventions, trafficking in human beings, especially women and children, mistreatment of refugees and asylum-seekers, and a general violation of the rights of migrants have become rampant. Some global arrangement for managing migration would promote better linkages between migrants and countries of destination as well as countries of origin and thereby facilitate better circulation of skills and resources. This is one area that requires a major institutional shift, otherwise the issues might become unmanageable. The report of the Secretary-General to the General Assembly at its sixtieth session on human resources development (A/60/318) offers a more in-depth discussion of possible institutional innovations in this area.

36. International development assistance is crucial to the achievement of the United Nations development agenda, including the Millennium Development Goals. However, aid delivery and its utilization remain a major challenge. Effective aid utilization requires concerted efforts to understand its interaction with the national economy (see box 2). The quality of institutions of developing countries is key to enhancing the absorptive and development management capacity of recipient countries. Aid can also become a major input for fostering institutional change.

Box 2

Mozambique's performance assessment framework for donors

The Government of Mozambique and donors have agreed to establish a performance assessment framework for the donor community. The objective is to monitor donor behaviour on commitments, expose non-compliance and weaknesses to peer pressure, and strengthen donor accountability to government. Key features of this arrangement determine that, inter alia,

- Donors will identify the indicators to be assessed, which will subsequently be discussed with and vetted by the Government.
- Donor performance will be assessed by an independent team and subject to periodic discussion by the Government and donor peers.
- The donor performance assessment framework will be linked to an action plan and time frame for implementation.
- Annual donor performance reports will be released publicly.
- The framework will be continuously adapted based on collective and individual donor assessments.

Source: Richard Gerster and Alan Harding, "Baseline survey on programme and partners' performance in 2003", report to the G-15 Programme and Partners and Government of Mozambique, 2004. See also *Global Monitoring Report, 2005: Millennium Development Goals: From Consensus to Momentum* (Washington, D.C., World Bank, 2005), box 5.6.

37. While there have been some encouraging developments with regard to achieving the agreed ODA targets, globalization has also opened opportunities for exploring innovative ways of providing development finance. These institutional innovations can go a long way towards ensuring the timely realization of development goals. Innovative funding arrangements, such as the proposed International Finance Facility designed to front-load ODA disbursement, are institutional initiatives that could benefit from an environment of improved aid effectiveness.

38. The foregoing discussion points to fundamental institutional gaps at the global level. First, there is a need to realign the norms and rules that set equal standards of competition, financial regulations and sustainability expectations among unequal partners. The principles of special and differential treatment and transitional provisions applied flexibly would yield significant development gains for developing countries. Second, the voice and participation of developing countries in global decision-making and norm-setting institutions must be strengthened. Discussions on these issues have started in the Bretton Woods institutions, but progress remains slow. There is also a need to make global economic governance more open, transparent and representative of the emerging realities. Developing countries should secure appropriate representation not only in the Bretton Woods institutions but also in arrangements like the Bank for International Settlements, the Financial Stability Forum and the Basel Committee on Banking Supervision. Such representation would ensure that developing countries concerns are clearly

understood. Respecting the diversity of institutional forms should be the central plank of the global governance arrangements. Lastly, the interests championed by countries in different multilateral forums should be more consistent with their public commitment to development as reflected in the internationally agreed development goals.

B. Meeting basic needs and promoting equity

39. Social development is at the centre of efforts to make globalization work for everyone. It is about the well-being, dignity and aspirations of peoples. These aspirations have been captured in the internationally agreed development goals, as contained in the outcomes of the United Nations conferences and summits. They cover a whole range of issues arising from the commitments on human rights, education, health, gender equality, eradication of poverty and hunger, social integration and access to productive employment. This development agenda provides a policy framework that can make the process of integration a beneficial one for every country, as it deals with the development of societies.

40. In terms of actual achievements of specific goals, however, the track record among developing countries as a whole has been mixed, with the greatest shortfall in Africa. One of the reasons for the lack of progress is the inherent tension between the achievement of social development objectives and an economic context increasingly determined by selective liberalization, the defining feature of globalization. For instance, one of the characteristics of the world economy, which is likely related to economic liberalization, has been a general increase in income inequality between developed and developing countries, and within many developed and developing countries. In the process, capital has gained at the expense of labour. Women have been hit particularly hard in a system that does not place an adequate premium on non-market contributions to development. Developed countries have also faced the challenges of social disruption; but in most cases, the institutionalization of social welfare and social protection systems has been very successful in ensuring that marginalized people have access to minimum basic requirements for a dignified existence. However, many people in poor countries have no such social protection systems.

41. The reality of global integration has therefore been accompanied by a growing social institutional gap, especially in such critical services as education, health, water, sanitation and housing, where the key dilemma of balancing the market criterion of profitability and the social goal of equity is coming to dominate the institutional debate. There is a need to revisit and redesign the pillars of social inclusion and integration whose strength has been eroded in the unfolding global socio-economic dynamics of the last two decades. This redesigning process has to be undertaken by each and every country in conformity with its own circumstances. A more detailed examination of a few key areas can help illustrate this need.

42. Health is a key social development goal and is essential for economic growth and development. The provision of free, heavily subsidized or publicly funded health services is an important instrument of social policy and equity in many, if not all, countries. Ensuring people living in extreme poverty some modicum of access to health services allows them to live productive lives. That there has been a deterioration of accessible health services as well as of available trained personnel

in many developing countries, has been, in several cases, the result of migration of skilled personnel to developed countries further compounded by the spread of HIV/AIDS and the resurgence of malaria and tuberculosis. The Millennium Development Goals of having reduced by two thirds the under-five mortality rate and by three quarters the maternal mortality ratio, and to have halted and begun to reverse the spread of HIV/AIDS and the incidence of malaria and major diseases, all by 2015, will require major investments in rebuilding and strengthening health systems.

43. As a service sector, health services are increasingly open to international trade. The monumental task of improving health systems and infrastructure will therefore require new flexible institutional responses that allow the contribution of the private and public sectors to support each other, while taking into account the question of access for the poor. Proposals to remove user fees in basic health service provision and to provide free mosquito nets are encouraging steps towards restoring pro-poor health service provision. However, these need to be grounded in strong institutions. Therefore, in the long run, health systems in developing countries need to be strengthened. They will also require enhanced investment in human capital. Appropriate action at the global level is also needed to support initiatives to strengthen institutions and invest in human resources in the health sector.

44. An important health-related challenge is to provide access to affordable medicines. Given the primary role of the private sector in producing medicines and undertaking research as well as the global rules that govern access to these medicines, innovative institutional responses are required to address this issue. One such approach is to promote partnerships between the private and public sectors in supporting health services delivery in developing countries and in research and development, especially for the under funded diseases that afflict the poor.

45. Education and training are another fundamental tool in poverty eradication, social inclusion and the transition to higher productivity, since skills acquisition is vital to productive and remunerative employment. Moreover, education is the foundation upon which a knowledge and information society is built. The quality and depth of education also matter as a basis for global competitiveness and inclusion.

46. Educational service provision has also become of interest to private sector investment. Many developing countries find themselves in a dilemma where increasing privatization of the sector entails large social costs that can threaten political stability. For example, despite the growing number of private schools nationwide, public schools still account for most coverage of basic education in India. Therefore, enhancing the quality of publicly provided education is as important as addressing equity concerns in growing privatization of education. In this regard, programmes to fund universal public primary education, supported by donor partners in many developing countries, should be complemented by initiatives to introduce and mainstream quality and accessible education at all levels.

47. Employment is an essential element for a dignified life and should form an essential part of the policy framework for integration. The generation of employment should be at the heart of macroeconomic and social policies. Governments should ensure that efforts by enterprises to cut costs do not involve the exploitation of workers. While this should be the purpose of labour laws, due caution must be exercised in order not to stifle the legitimate growth of businesses

and job creation. The social protection of workers through systems that suit local conditions is part of an enabling institutional base in this area. In addition, the full potential of informal sector and of small and medium-sized enterprises should be promoted with the aim of unleashing their full entrepreneurial capacity, including through innovative methods for conferring property rights, and affording more universal access to credit. The needs of women and other vulnerable groups should be emphasized in connection with efforts to promote inclusive finance.

C. Promoting environmental sustainability

48. Globalization adds multifaceted challenges and opportunities to the pursuit of environmental sustainability and sustainable development. The recognition of the commonality of environmental concerns has led to the proliferation of multilateral environmental agreements, which have to be implemented by all parties. This has placed an increasing burden on many developing countries because complying with the norms and standards set in these agreements often involves costly governmental structures and reporting mechanisms. Moreover, the need to ensure that multilateral environmental agreements and other objectives such as technology, trade, investment and resources mobilization are mutually supportive has sometimes gone unmet.

49. Often, incentives competition for the scarce capital flows that are available lower the technological content and other benefits of FDI, thereby exacerbating environmental degradation.[2] The rapid expansion of global commerce in natural resources such as timber, minerals, and other raw materials is putting ecosystems in some of the most biologically diverse places on earth increasingly under threat. Frequently, markets fail to recognize the full value of natural ecosystems and there are no institutional mechanisms to reconcile the profit motive and the currently uncompensated free services provided especially by developing countries.

50. A related problem is that of the production subsidies and protection, especially for agriculture in developed countries, that are undermining food production and security and exports of developing countries. This promotes an overuse of water, fertilizer and pesticides in developed countries and limits the scope for profitable modernization of agriculture in developing countries. This explains, in part, why farmers in developing countries seem to overexploit arable land. Similar problems of overexploitation are created by subsidies to fisheries, mining and other natural resource-based economic sectors. The end of such price distorting subsidies and support in developed countries, which lead to misallocation of resources and environmental damage, should be a key development outcome of the Doha Round of multilateral trade negotiations.

51. International watersheds, fisheries, acid rain, air pollution and climate change are transboundary environmental challenges that require cooperation between countries in order to be addressed effectively. Where political boundaries do not coincide with shared ecosystems, the promotion of regional institutions for the management of transboundary ecosystems offers vast mutual economic and environmental benefits.

52. The development of innovative funding sources and markets that internalize global environmental costs and reward benefits can provide additional financial resources for funding sustainable development. The Global Environment Facility,

the Multilateral Fund of the Montreal Protocol on Substances that Deplete the Ozone Layer,[3] the Clean Development Mechanism, emissions trading schemes, and joint implementation under the Kyoto Protocol[4] to the United Nations Framework Convention on Climate Change[5] are important institutional innovations in funding global environmental investments. Several longer-term innovative ideas for financing development to complement ODA, including debt-for-nature swaps, could be explored. While the international community has subscribed to the principle of common, but differentiated responsibilities, the institutional gap in the implementation process, relating to the provision of adequate financial resources, access to dedicated financing mechanisms, better scientific understanding of the issues, and stronger mechanisms to monitor and ensure implementation, remains to be bridged.

53. The sustainability of the natural environment has important implications for the well-being of all peoples, and for the implementation of the United Nations development agenda, including the Millennium Development Goals. When people living in poverty overexploit their natural resources and the ecosystem to survive, they cause environmental damage. Degraded natural resources and ecosystems entrench poverty and undermine livelihoods, thereby creating vulnerability. In addition, unsustainable production and consumption patterns, particularly in developed countries, increase environmental vulnerabilities in all countries through increased water usage, biodiversity loss, air pollution and greenhouse gas emissions/climate change. Regional and global cooperation in managing and sharing resources, knowledge and technology is central to addressing these challenges and requires institutional response and support. Examples include institutional arrangements concerning international watercourses and lakes, such as the Aral Sea basin, the Danube River basin and Lake Victoria, that address such issues as water access and quality and ecosystem management through cooperation among riparian States.

54. The transition from low to high productivity and to cleaner production that is environmentally sustainable is especially difficult. The major impediments to this transition are a combination of internal and external factors such as small internal markets, and poor access to technology and external markets. The result has been overexploitation of natural resources with adverse effects such as deforestation, desertification, groundwater depletion, pollution and endangerment of biological diversity. Solutions to these problems often lie beyond national jurisdictions and strategies. The global regimes that govern technology and ecosystem management need to promote rules and norms that are pro-development and give developing countries the leeway to move to higher productivity and sustainable development.

55. Although the spillover effects of major environmental concerns dictate global and regional approaches, most tangible actions remain national. In most countries, separate ministries are responsible for managing different aspects of ecosystems, such as the environment, lands, forestry and fisheries. In most cases, environmental sustainability is not part of the mandate of many existing regulatory bodies, like independent regulators of privatized water and power systems. In such cases, they may not necessarily promote access, ensure sustainable use of natural resources or fully incorporate environmental impact considerations. Although political leadership remains important in the process of adopting institutional frameworks for sustainable development, each country will configure the arrangements that best respond to its unique demands.

56. The development of integrated approaches, though the optimal choice, has been very limited because of the inherent tensions between the quest for survival and development, and environmental sustainability objectives. To ensure that the long-term benefits of environmental sustainability are taken into consideration at the policy design stage, a careful balance has to be established among social, economic and environmental objectives. These tensions should be tackled head-on at the planning stage.

VII. Conclusions and recommendations

57. The need for institutional development and adaptation is an enduring challenge. A limited view of institutional reforms — especially one that focuses only on the role of markets and securing private property rights, without due attention to a holistic and optimal development outcome from the point of view of society — may be inadequate. Whereas the role of markets is critical, it needs to be seen within the context of broader societal goals of social equity and environmental sustainability. The principal challenge facing developing countries is to develop sound institutional foundations for the effective and efficient functioning of markets within the framework of their social and environmental objectives. The supportive institutional arrangements may vary, given the level of development and specific national and regional contexts. This notwithstanding, empirical evidence shows that institution building and strengthening are vital in the quest of developing countries for sustainable development and beneficial integration in the global economy. A central objective should be to ensure that institutional reforms respond to the needs of the poor as a key priority in poverty reduction strategies and, indeed, in overall strategies to promote more rapid, broad-based and sustainable growth and development.

58. Strong and widely accepted institutions — rules and norms and the organizations, both private and public and formal and informal, embodying them — that respond to the needs and priorities of poor groups, especially the rural poor and women, are essential for rapid poverty reduction and development. Weak, ineffective, corrupt, narrowly based or captive institutions create uncertainty and unfairness, discourage saving and investment, and lower growth rates.

59. Market-enabling institutions are fairly well known. Why they do not work in certain countries relates to their weaknesses in terms of human capital, social base and political commitment to rule-based approaches. A considerable amount of reconceptualizing and situating them in different contexts constitute a challenge that must be tackled in the framework of the development strategies of all developing countries.

60. There has been a considerable advance in the understanding of the relationship between economic development and environmental sustainability. These are areas where acting nationally is no longer sufficient. Reconciling the development aspirations of developing countries and the needs of environment sustainability requires global cooperation. In spite of the many multilateral environmental agreements, an institutional gap remains in the implementation machinery which requires urgent action.

61. Finally, changes are needed to make globalization work for all. This requires reshaping the rules that govern trade, finance and technology transfer and filling the

institutional gap in areas like investment and migration, and giving developing countries a more effective voice and the means to participate in making the global decisions that affect them. First, there is a need to realign the norms and rules that set fairer standards for competition and financial and environmental regulations among unequal partners. The principles of special and differential treatment and transitional provisions applied flexibly would yield vast development gains for developing countries. Second, the voice and participation of developing countries in global decision-making and norm-setting institutions must be strengthened. Discussions on this issue have started in the Bretton Woods institutions, but progress remains slow. Furthermore, in other policymaking and standard-setting bodies, such as the Bank for International Settlements, the Financial Stability Forum, and the Basel Committee on Banking Supervision, no formal participation of developing countries exists today. Recent efforts to involve developing countries through informal arrangements in such exclusive international groupings, although welcome, need to be established on a more formal basis.

62. **The following recommendations merit attention:**

(a) **Developing countries should consider putting institutional development high among their development priorities, particularly in sectors critical to the achievement of the international development goals. Such strategies should ensure the development of institutions that are flexible and responsive to changing needs;**

(b) **Governments should design their policies and regulatory regimes and agencies so as to ensure that they flexibly balance social, economic and environmental objectives. This in turn requires a transparent, participatory approach involving all stakeholders;**

(c) **The private sector, civil society and public-private partnerships have a crucial role in delivering development within the new dynamics of interdependence. Therefore, the development of flexible regulatory frameworks governing arrangements among Governments, the private sector and consumers deserves high priority;**

(d) **Efforts to expand productive employment and decent work should include measures to recognize, support and regulate the informal economy with rules and arrangements that enable, rather than constrain, the sector;**

(e) **Countries may consider establishing and/or strengthening regional and interregional cooperation arrangements as a way of pooling their resources and utilizing regional synergies in the areas of the environment, resource management, trade and knowledge as well as information-sharing on major development issues;**

(f) **A global sustained capacity and institutional development effort is required, supported by United Nations system organizations, the Bretton Woods institutions and the World Trade Organization, and all other relevant international organizations, so as to promote the dissemination of institutional innovations in their areas of competence that can be adapted by developing countries in accordance with their needs and priorities. To this end, national institutional development should be a central element of development support to developing countries;**

(g) Global institutional challenges in the areas of trade, finance, investment and technology need to be reviewed with the aim of promoting pro-development global rules and norms that give developing countries a better chance of integrating beneficially in the global economy. This task of generating the understanding and political will to act on such an agenda could be undertaken, initially using existing mechanisms for dialogue on policy and institutional coherence;

(h) Consideration could be given to the organization of expert-level meetings for in-depth analysis and review of the key national, regional and global institutional questions raised in this report (though the analysis and review need not be limited to those questions) as a way of bringing greater clarity to the complex challenges of building inclusive, accountable and dynamic institutions that are pro-poor and pro-development.

Notes

[1] Nancy Birdsall, Dani Rodrik, and Arvind Subramanian, "How to help poor countries", *Foreign Affairs*, vol. 84, No. 4 (July/August 2005).

[2] See World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (Geneva, International Labour Office, 2004). Also available from http://www.ilo.org/public/english/wcsdg/docs/report.pdf.

[3] United Nations, *Treaty Series*, vol. 1522, No. 26369.

[4] FCCC/CP/1997/7/Add.1, decision 1/CP.3, annex.

[5] United Nations, *Treaty Series*, vol. 1771, No. 30822.

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Information and communication technologies for development: progress in the implementation of General Assembly resolution 57/295

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 57/295, on the development of a comprehensive information and communication technologies (ICT) strategy for the United Nations system in the framework of the United Nations System Chief Executives Board for Coordination (CEB).

This is the third report of the Secretary-General on that resolution. Since the adoption of resolution 57/295, CEB has made significant progress in establishing the United Nations system ICT strategic framework, its elaboration into specific initiatives and projects, including a knowledge-sharing and knowledge management strategy, and initiating the preparation of business case analyses for eight priority initiatives to be implemented by the organizations of the United Nations system. This work, to which the ICT Task Force also contributed, is being guided by the ICT Network of CEB and an ICT initiative steering group. Particular attention is being given to the development of the knowledge-sharing and knowledge management strategy to help ensure the highest level of commitment, support and participation of the organizations of the United Nations system in implementing the ICT strategic framework.

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1. Recognizing the value of information and communication technologies (ICT) to the work of the United Nations system, the General Assembly, on 20 December 2002, adopted resolution 57/295, entitled "Information and communication technologies for development" requesting the Secretary-General, as Chairman of the United Nations System Chief Executives Board for Coordination (CEB), "to develop a comprehensive information and communication technologies strategy for the United Nations system".

2. Since the adoption of the resolution, the organizations of the system have made considerable progress in coordinating and collaborating on their use of ICT. This has enabled them to leverage successfully all that these strategic tools have to offer, both for facilitating the implementation of the Millennium Declaration, especially the Millennium Development Goals, and for achieving operating efficiencies within the organizations of the United Nations system. As noted in the two previous reports of the Secretary-General submitted pursuant to resolution 57/295 (A/58/568 and A/59/563), the overall policy work of the system has been guided by the High Level Committee on Management and the High Level Committee on Programmes of CEB, while the technical work has been pursued by the ICT Network — a system-wide working group of ICT managers and directors.

3. Under the policy guidance of the High Level Committee on Management, the ICT Network has helped create a number of important information-sharing tools. These include the United Nations system Extranet, an inter-agency websearch capability and an inventory of framework agreements for procurement. At the same time, the High Level Committee on Programmes has focused on advancing and facilitating knowledge-sharing and knowledge management among the United Nations system organizations as a priority issue.

4. In the first year after the adoption of the resolution, progress focused mostly on creating limited capabilities for meeting the information-sharing needs of the system, including ways that such sharing could result in efficiencies in the ICT operations of the organizations of the system. While these activities resulted in important new capabilities for the system, it became clear that for further strategic progress, greater direction was required from the senior managers.

5. Progress in the following year significantly addressed this need through the creation of the United Nations system ICT strategic framework by the ICT Network, which was endorsed and adopted by the High Level Committee on Management, the High Level Committee on Programmes and CEB. The strategic framework presented a charter for maximizing the value of investments in ICT through a systemic approach to the management of technological and organizational change. Underpinning the charter, the strategic framework presented 15 initiatives, grouped into five categories: ICT in development, ICT governance, information security, working together and sustaining the initiative.

6. The development of the ICT strategic framework benefited from the contribution of the ICT Task Force. The latter worked on appropriate and effective modalities for engaging the experience of the private sector and facilitated multi-stakeholder dialogue in order to help mobilize the most advanced technological solutions and management practices to improve the creation and management of knowledge in the United Nations system.

7. Since the last report to the General Assembly, the ICT Network, under the guidance of CEB and its High Level Committees, has proceeded to implement these initiatives, as well as an evaluation of the estimated costs and expected benefits of initiatives in each category. Recognizing that the system could not realistically pursue all 15 initiatives simultaneously, the network of ICT managers and directors established a methodology to prioritize the initiatives using a combination of factors, including estimated costs of implementation, likely benefits and the relative value of each initiative to each organization of the United Nations system. The outcome of this process indicated that 8 of the original 15 merited immediate attention: ICT services sourcing strategy; ICT development network; common applications solutions; knowledge-sharing; enterprise resource planning systems; ICT governance and best practices; business case development and costing; and ICT training. For each of the initiatives, a detailed business case is being developed to quantify the actual costs and benefits each would provide.

8. The challenge of any ICT initiative is to ensure that it does not operate in a business vacuum, and therefore all such initiatives, whether they are to satisfy the needs of a single organization or span the entire system, must be driven by a clear business need. To ensure this business-oriented direction for each of the business cases, the ICT Network proposed the creation of an ICT initiative steering group. This small guidance body, with members drawn from the High Level Committee on Management, the High Level Committee on Programmes and the ICT Network, will advise the ICT Network on directions that priority initiatives can take and direct the efforts of any ad hoc working groups developing the business cases for the priority areas. The concept of the steering group was endorsed by the High Level Committee on Management.

9. As the work proceeds on implementing the ICT strategic framework, a number of issues have emerged to guide its progress. These issues, or themes, came into sharper focus during the ICT Network meeting in the spring of 2004, which concentrated on the steps necessary to achieve the strategy: addressing high-value initiatives; gaining commitment from agencies; identifying an implementer of the selected initiatives; obtaining sponsorship and establishing governance; and planning implementation details. It is worth noting that the second of these steps, gaining commitment from agencies throughout the system, is of particular relevance in the area of promoting ICT synergies, since it involves ensuring that the initiatives satisfy the specific needs of each organization.

10. The concept of ensuring that ICT investment aligns with business needs has been the focus of the further development of the ICT strategic framework. Through consultations with a number of external specialists, a consistent theme has emerged on the importance of support from senior United Nations system management for the business changes necessary to realize any long-term potential savings from additional ICT investment. In order to achieve any dramatic synergies of ICT investment across the system, it might be necessary to modify and align certain business practices across the system. Making any kind of business process change is always difficult, and requires leadership and commitment at the highest organizational levels.

11. While work proceeds in many areas of the strategic framework, of particular note is the progress in the critical area of knowledge-sharing and knowledge management. The need to enhance the capability of the system to manage its

intellectual resources has been noted many times, most recently in the report of CEB entitled "One United Nations — catalyst for progress and change". While efforts are being made in many locations throughout the system, they remain uncoordinated and, in many cases, have limited support. To address this, the ICT Network, under the direction of the High Level Committee on Programmes, has begun work on creating a system-wide knowledge-sharing and knowledge management strategy, intended to link together and guide individual efforts in this critical area.

12. At the global level, the World Summit on the Information Society, under the auspices of the International Telecommunication Union, has been addressing these issues. The first phase of the World Summit (Geneva 2003) adopted a Declaration of Principles and a Plan of Action, which recognized the vital importance of ICT and the need for the organizations of the United Nations system to make the fullest use of these powerful tools in achieving their mandates. The second phase of the World Summit, scheduled for 16 to 18 December 2005 in Tunis, will follow up on the outcome of the first phase, and in particular focus on issues of governance and financing mechanisms for ICT, for which the Secretary-General has been requested to provide input. Developments in the World Summit process are being followed by CEB and the High Level Committee on Programmes.

13. Moving the United Nations system ICT strategic framework forward remains a key objective of all United Nations organizations. Their particular focus is on meeting the knowledge exchange potential, with an emphasis on using ICT to achieve the Millennium Development Goals, and fully supporting the outcome of the World Summit on the Information Society.